

A
BRIEF VIEW
OF THE
TOWNSHIP LAWS

UP TO THE PRESENT TIME;

WITH

A TREATISE ON THE LAW AND OFFICE OF

CONSTABLE,

THE

LAW RELATIVE TO LANDLORD AND TENANT,

Distress for Rent,

INN-KEEPERS, &c.

COMPILED

BY THE AUTHOR OF THE PROVINCIAL JUSTICE.

TORONTO:

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A. D. 1835.

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P R E F A C E.

IN the last Session of Parliament, the Legislature entered upon a revision of the Laws relating to the Townships. An Act was passed, the 5th Wm. IV. c. 8, which will now very shortly come into operation, containing many new provisions;—the most important one of which, perhaps, is that by which a Board of Commissioners will be appointed in each Township, for the government of local affairs, which have been hitherto, under the regulation and controul of the Magistracy.

Many of the former Acts relating to this subject have been entirely repealed, as well as various entire clauses of other Acts, leaving, in fact, very little of the old law in operation. Such parts, however, as still remain in force, lie so scattered through various statutes, that it requires no ordinary degree of diligence and research to define the actual existence or effect of them. This consideration has induced the author to undertake the laborious office of simplifying and arranging the Township Laws in the form they are now presented to the Public. In the execution of the work, he trusts that he has succeeded, both in perspicuity and style, so as to render the subject intelligible to all classes. It would be presumptuous in him to point out the advantages which the public are likely to derive from a work of this description. He trusts that it will be the means of conveying much useful information to many who have hitherto wanted it. The price of the book will enable the humblest individual to purchase it. In its progress through the press, it has rather exceeded the bounds which the author intended. The additional matter embraces several very interesting subjects, upon which general information may be desired. Thus, in addition to the new Township Meeting Act, and the Highway and Assessment Laws, the reader will find a treatise on the Law of "Landlord and

Tenant" and "Distress for Rent," the "Court of Requests" and "Summary Punishment" Acts, and a list of "Justices' Fees," regulated by a late Act of Parliament. Those who may be called upon to serve on Juries, will perceive the Law stated which prescribes their duties. The Landed Interest will also find some useful information on matters connected with their department respecting "Boundaries," "Line Fences," "Title by Possession," "Sheriff's Sales," &c.; and the unfortunate Debtor will also be apprised of the provision which the Legislature has made for him in the season of misfortune or distress.

The work, although calculated to afford information to all classes, will, in particular, be found a useful guide to Township Officers, Surveyors, and the "Board of Commissioners" under the new Township Act.

The law relative to the Office and Duty of "Constable" has been taken from the ablest authorities, as well as most of the other material parts of the work not expressly taken from the Statutes. The author does not pretend to any originality; his merit, if any, will consist in the collection and arrangement of much useful information in a small compass. In now submitting the work to the approval of a liberal public, he hopes to find in their estimation of its worth and utility, the highest reward that can be conferred any author.

Toronto, 8th November, 1835.

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THE TOWNSHIP MANUAL.

ASSESSMENTS.

By statute 59 G. 3: chap. 7. sec. 2. the following property is declared rateable, at the rate and valuation set forth after the first Monday in January, 1820.

	£	s.	d.
For every acre of arable, pasture or meadow land,.....	0	20	0
" every acre of uncultivated land,.....	0	4	0
" every town lot situated in the towns of York, Kingston, Niagara, & Queenston,.....	50	0	0
" Cornwall, Sandwich, Johnstown and Belleville,	25	0	0
" every town lot on which a dwelling-house is erected in Brockville, being composed of the front half of lots Nos. 10, 11, 12 and 13, in first concession of the township of Elizabethtown, in the district of Johnstown,..	30	0	0
" every town lot on which a dwelling house is erected in the town of Bath, being composed of the front or south half of lots 9, 10, 11, in the first concession of Ernestown, Midland District,.....	20	0	0

	£	s.	d.
For every house built with timber, squared or hewed on two sides, of one story in heighth, and not two stories, with not more than two fire places,.....	20	0	0
“ every additional fire place,.....	4	0	0
“ every dwelling-house built of squared or flatted timber on two sides, of two stories in heighth, with not more than two fire places,.....	30	0	0
“ every additional fire-place,.....	8	0	0
“ every framed house under two stories in heighth, with not more than two fire-places,.....	35	0	0
“ every additional fire-place,.....	5	0	0
“ every brick or stone house of one story heighth, and not more than two fire places,	40	0	0
“ every additional fire-place,.....	10	0	0
“ every framed, brick or stone house, of two stories in heighth, and not more than two fire-places,.....	60	0	0
“ every additional fire-place,.....	10	0	0
“ every Grist-mill wrought by water, with with one pair of stones,.....	150	0	0
“ every additional pair,.....	50	0	0
“ every Saw-mill,	100	0	0
“ every Merchant's shop,.....	200	0	0
“ every Store-house owned or occupied for the receiving and forwarding goods, wares, or merchandize, for hire or gain,.....	200	0	0
“ every Stone Horse kept for covering mares, for hire or gain,.....	199	0	0
“ every horse of three years age and upwards,.....	8	0	0
“ oxen of the age of four years and upwards, per head,.....	4	0	0
“ milch cows, per head,.....	3	0	0

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		For horned cattle, from 2 to 4 years of age	1	0	0
0	0	" every close carriage kept for pleasure,			
0	0	with four wheels,.....	100	0	0
		" every phaeton, or other open carriage,			
		with four wheels, kept for pleasure			
		only,	25	0	0
0	0	" every curricule, gig, or other carriage,			
0	0	with two wheels, kept for pleasure			
		only,.....	20	0	0
		" every wagon kept for pleasure,.....	15	0	0
0	0	Every stove kept in a room where there is no fire-place,			
0	0	shall be deemed a fire-place.			
0	0	§ 4. Lands in fee simple, or held by land board certificate,			
		order in council, or certificate of any Governor, or by			
0	0	lease, shall be rateable property. § 5. Each lot of land in			
0	0	the before recited towns, other or less than a town lot,			
0	0	held by lease or otherwise, on which a dwelling-house			
		shall be erected, shall be considered a town lot. § 7 The			
0	0	quarter sessions having ascertained the sum required to			
0	0	defray the public expenses of the district, shall divide and			
0	0	apportion the same according to the rateable property of			
0	0	each person, and direct the clerk of the peace to transmit			
0	0	a copy of the assessment roll to each collector in the			
0	0	district, the sum levied not to exceed <i>one penny</i> in			
0	0	the pound, per annum. § 8. No new assessment shall			
0	0	be made till it shall appear to the sessions that one-			
		half of the money collected by virtue of the preceding rate			
		and the whole collected under any act than or therefore			
0	0	to be in force, shall be expended. § 12. Schedules of			
0	0	granted and leased lands shall be furnished annually by			
0	0	the Surveyor General, to the District Treasurer, on or			
0	0	before the first of July. § 13. All lands described in the			
		schedule as granted or leased, shall be liable to assessment,			
		whether occupied or not, and the collector having a			
0	0	warrant for this purpose, may enter upon late unoccupied			
0	0	lands and take any distress found thereon, and sell the			
0	0	same, as if the rate had been due by the then occupier.			
		§ 14. The treasurer of each district shall keep separate			
		accounts for each township, and leave the same open to			

inspection, between the hours of ten and three, on the first Monday in every month, and take one shilling and three pence for such inspection, and no more. § 15 If the rates upon any lot shall be in arrear three years, the rates so in arrear shall be increased *one-third*; if in arrear for five years then *one-half*; and if for eight years then *doubled* and the said rates shall be thenceforward charged in double the amount. § 17. An aggregate account shall be transmitted by the Clerk of the Peace to the Lieutenant Governor. § 18. The Treasurer of the district (appointed by the general quarter sessions) shall furnish sufficient security, and may retain four per cent. upon the amount in his hands. § 19. The Treasurer's accounts shall be rendered upon oath, at the respective general quarter sessions, and a certified copy transmitted to the Governor. § 20 The Treasurer shall be removable by the sessions at their pleasure. § 33. The sum of twenty shillings to be paid to the Surveyor General for every schedule for each township, furnished by him, on or before the 1st day of July, 1820, and for every supplementary schedule afterwards, the sum of two shillings and six pence, to be paid by the Receiver General. § 23. 24. Limiting the continuance of this act, and giving the form of assessment roll, are both repealed by the next statute.

By Stat. 6 G. 4. c. 7. § 1. Reciting that it was expedient to make perpetual the 59 G. 3. except such parts thereof as are hereby repealed, and to render more certain the due collection of such rates and assessments, by providing for levying assessments in arrear, it is enacted, that the 23rd sec. of the above act should be repealed. § 2. The grantee, owner, or occupier of any township block or parcel of land, or any parcel thereof, not surveyed by or under the authority of the Surveyor General, should on or before the 1st day of July next, return to the treasurer of the district, a schedule of such lands, or so much as had been surveyed, designating same by numbers and concessions, or otherwise, according to any plan or map thereof, upon pain of forfeiting double the amount of assessment, yearly, until such return should be made. § 4. Such penalties to be recovered before three justices,

and levied by warrant of two justices, one half to the informer, and the remainder to the treasurer of the district, to be applied in the same manner as the assessments. § 5. And whenever any such schedule shall be returned, the treasurer shall enter the same in his books, in like manner as if the same had been returned by the Surveyor General; and all the provisions of this act relative to the collection of rates and assessment, arrears and penalties, shall apply to lands so returned. § 6. The Treasurers of districts shall report to the general quarter sessions, all lands upon which the assessments shall be eight years in arrear, after the first of July, 1828. (This clause has been repealed by the 9 G. 4. c. 3. § 9.) § 7. Upon such accounts being so made, the clerk of the peace shall issue a writ for levying the assessments in arrear, directed to the Sheriff, by sale of a portion of the lands upon which the assessments are chargeable, if no distress be found thereon. § 8. Such writs shall be returnable at the third quarter session after issuing the same. § 9. The lands liable to sale shall be advertised by the treasurer, in the Upper Canada Gazette, and in some newspaper within the district, within one month after rendering his account. § 10. Within one month after receipt of the writ, the sheriff shall advertise the lands in the U. C. Gazette, and in all the newspapers in his district, and the time and place of sale. § 11. No sale shall be made in less than six months from the delivery of the writ to the sheriff, nor out of the township unless thinly inhabited, and then in the township to which it may be annexed. § 12. The lands shall be sold by public auction, as follows:—The assessment in arrear shall be declared with the expenses of the writ; and the person who shall offer to pay the same for the least quantity or portion of the lands, shall be considered the purchaser thereof. § 13. The sheriff shall begin the sale at the front angle on that side from whence the lots are numbered, and measure backward, taking a proportion of the width corresponding in quantity with the proportion of such lot in regard to its length and breadth, according to the quantity required to make the sum demanded; and at every subsequent sale

of a portion of the same lot, shall take a tract of equal width as the former, measuring backwards from the limit of the lot last sold. § 14. In every case where, from the position of the tract, the mode last mentioned cannot be pursued, then the sheriff may sell such portions of land as shall appear to him most for the interest of the proprietor. § 15. No greater interest in the crown or clergy reserves shall be sold than is possessed by the lessees. § 16. The sheriff may adjourn the sales at his discretion, and re-sell the lands not paid for. § 17. Purchasers may be let into possession on payment of assessment dues, but owners may resume their lands within twelve months after sale, upon repayment of taxes, costs, and 20 per cent in addition to the purchaser. § 18. And if land not redeemed within the twelve months, the sheriff may execute a conveyance in fee simple to the purchaser, according to the form marked B. in the schedule. § 19. Before conveyance executed, the sheriff shall register a certificate of such sale, in lieu of any memorial. § 20. Conveyances may be registered, on payment of 2s. 6d. and no more. § 21. Treasurers neglecting to make returns for two sessions, shall on conviction at the assizes, forfeit their office, and justices may appoint another forthwith; and upon neglect of the justices, the Governor may appoint one during pleasure. § 22. Sales not to be avoided for any neglect in form but the party grieved shall have his remedy by action. § 23. Monies received by the sheriff shall be paid to the treasurers. § 24. A compensation of £5 shall be allowed to the treasurer for every account furnished under this act. § 25. 10s to the clerk of the peace for each writ. § 26. The sheriff may charge and levy a fee of 7s. 6d. upon every sale, and retain 3 per cent. on the sales. § 27. The treasurers shall give receipts for taxes paid.

By Stat. 9 G. 4. c. 3 § 1. any person holding lands not returned upon the assessment roll of the township where he resides, may pay to the treasurer of the district in which he resides the rates due on such lands, with a compensation of £5 per cent. to the treasurer. § 2. Accounts shall be kept by the treasurers, and copies verified by oath, shall

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be transmitted annually, on the 1st of July, to the treasurers of the Districts in which the lands lie, who shall at the same time transmit the amount received. § 3. The treasurer receiving such assessments shall credit the respective lots, and transmit receipts to the treasurer transmitting the amount. § 4. No greater accumulation than 50 per cent. shall be charged upon any lands on which assessments shall be paid on or before the 1st July, 1829; and in all cases hereafter, fifty per cent. and no more shall be charged in addition, where the assessments shall remain in arrear longer than four years. § 5. Arrears of assessments paid by the first day of July 1829, shall be liable only to an increase of 25 per cent. on the amount due for the first five years. § 6. Treasurers shall not, after the 1st July, 1829, receive taxes on lands in other districts, if they have been suffered to run in arrear for more than six years; in such case the assessments must be paid in the districts in which the lands lie. § 7. No partial payment shall be received, when more than eight years assessments are due. § 8. imposes a penalty of £50. upon the neglect or omission of any treasurer in his duty, to be recovered before the sessions, on the oath of one or more witnesses; one-half to the informer, the other to the public accounts; and the justices in session shall examine the accounts required to be kept under this act, and ascertain whether the same have been transmitted, together with the monies, to the several district treasurers. § 9, repeals the 6th § of the 6 G. 4, c. 7, and enacts, that the duties therein prescribed and required to be done by the several treasurers, shall be performed by them at or before the general quarter sessions next after the 1st day of July annually, and the clerk of the peace shall proceed thereon in manner pointed out by the 7th clause of said act. § 10. In case of the erroneous description of any lot, the owner may make oath before any one justice that the sum paid was for such lot and concession, specifying the same to enable the treasurer to credit the same. § 11. And when from death or other causes, such affidavit cannot be made, justices in sessions are empowered to hear and determine upon such evidence as may be adduced, and if in favour of the plaintiff, to order the treasurer to credit the lot accordingly.

A C C O U N T	NAMES.		No. of Acres of Land.
		Uncultivated.	
	Cultivated.		
	No. of lot or other designation if a part describe which it is.		
	No. of concession or other description.		
	Over sixteen years of age.	No. of Males resident in the Family	
	Under sixteen years of age.		
	Over sixteen years of age.	No. of Females resident in the Family	
	Under sixteen years of age.		
	Total number of persons resident in each Family.		
	Town lots in Kingston Toronto Niagara & Queenston £50 each		
	Do in Cornwall, Sandwich, Johnstown & Belleville £25 each		
	Do. in Brockville, at £30 each.		
	Squared or hewed timber on two sides, one story.	Houses.	
	Additional fire-places.		
	Framed, under two stories.		
	Additional fire-places.		
	Squared timber, two stories.		
	Additional fire-places.	Mills.	
	Framed, brick or stone of one story, with not more than two fire-places.		
	Additional fire-places.		
	Framed, brick or stone, of two stories, with not more than two fire-places.		
	Additional fire-places.		
	Wrought by water, with one pair of stones.		
	Additional pair of stones.		
	Saw Mills		
	Merchant Shops		
	Store Houses.		
	Stone Horses for covering Mares for hire or gain.		
	Horses of three years old and upwards.		
	Oxen four years old and upwards.		
	Milch Cows.		
	Horned Cattle from two to four years old.		
	Close Carriages with four wheels, kept for pleasure.		
	Phaetons or other open carriages kept for pleasure, 4 wheels.		
	Curricles, gigs or other carriages, 2 wheels, kept for pleasure.		
	Wagons kept for pleasure.		
	Rate per Pound.		
Total. £	s d		

AMOUNT OF ASSESSMENT.

Form of Assessment for the Township of ——— for the year ———. § 6 U. A. c. 7.

No. of Acres of Land.	No. of Males resident in the Family.	No. of Females resident in the Family.	Houses.	Mills.	Wells.	Other.
50 each.	25 each.					

Form of Assessment for the Township of——— for the year———. § 6 U. 4. c. 7.

By 38 G. 3, c. 1, monuments may be placed at the corners of every township and concession, and the lines from the monuments so erected, shall be the permanent boundary lines of such townships and concessions. § 4. Any person knowingly or wilfully pulling down, defacing, altering or removing any such monument, shall be guilty of felony. § 6. Upon application made to the sessions by thirty freeholders of any township, to have monuments erected, such justices shall form an estimate of the expense, and lay an equal assessment upon every acre of land within such township, to be raised and collected by a warrant under the hands and seals of any two of them, directed to the collectors of such townships, in such manner and by such means as in other cases, and to pay the same, when collected, to the treasurer of the district, to answer the charges incurred by erecting such monuments. § 7. Provision made for collecting same on unoccupied lands, by notice in the Gazette, and sale of part thereof to pay such assessments.

By the 59 G. 3, c. 14, § 2, it is enacted, that all boundary lines of townships, all concessions, lines, governing points, and all boundaries, posts, or monuments which have been placed at the front angles of any lots in the first survey, intended to determine the width of such lots, *provided* such survey has been performed under the authority of the executive government, shall be, and are thereby declared to be the true and unalterable boundaries of all and every such townships, concessions, and lots, respectively; and that every lot respectively, whether it shall, upon ad-

measurement, be found to contain the exact width, or more or less than what may be expressed in any letters patent, grant, or other instrument in respect thereof, shall embrace the whole width contained between the front posts, monuments or boundaries planted at the front angles of any such lot in such original survey, and no more nor less, and every half or quarter of such lot its proportion.

§ 2. And the boundary line of every township on that side from which the lots are numbered, shall be the course or courses of the respective division or side lines throughout the several townships and concessions; and all surveyors are required to run all division or side lines which they may be called upon to survey, to correspond with and be parallel to the respective town lines from whence the lots are numbered as aforesaid.

§ 4. And every licensed surveyor empowered to run any side line or limit between lots or lines required to go the same course of the side lines or limits between lots in the concession in which the land to be surveyed lies, shall, if it has not been done before, or if done before and the course cannot be truly ascertained, determine by a true meridian line, or some other infallible method, the true course of a straight line between the front and rear angles of such concession on that boundary of the township from which the lots are numbered, and run such line or lines truly parallel to such course.

§ 9. And the front of each concession, lot, or parcel of land shall be considered to be the end or boundary of such concession or lot which is nearest to the boundary of the respective townships from which the concessions are numbered.

§ 11. And in all cases when any licensed surveyor shall be employed to run any side line or limit between lots, and the original post or monument cannot be found, such surveyor shall obtain the best evidence the case will admit of; and if such limit cannot in such manner be nearly ascertained, then the surveyor shall proceed to measure the true distance between the nearest undisputed posts or monuments into such number of lots as the same contained in the original survey of such township having due respect to

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any allowance for roads as were contained in such original survey, and such limit so found shall be the true limit if accurately obtained.

COLLECTOR.

See also *post* "New Township Meeting Act."

CONSTABLE.

Who are liable to serve the office.

No person can be appointed a constable who is not an *inhabitant* of the place where he is to serve. 1 *Burn*, 703. *R. v. Adbard*, 4 B. & C. 772. And if a very poor and ignorant person be chosen, he may by law be discharged, and an abler person appointed in his room. *Ibid.* *Dalt.* c. 28.

Barristers at law, attornies, and other officers of the court of king's bench, are exempted from serving the office. 2. *Keb.* 508. *Cro. Car.* 389. 2 *Haw.* c. 10, § 30. And by the ancient custom of the realm, surgeons have been allowed the like privilege.

An *Officer in the king's service*, or a *gentleman of quality*, may perhaps be relieved from serving such office, upon application to the court of king's bench, provided there are other persons to execute the office. 2 *Haw.* c. 10, § 41.

It has been holden, that the king may exempt any person, if the exemption be not extended so far as to prevent the *existence* of the office in any particular place. *Rex. v. Clarke.* 1 *T. R.* 682. By the 10 & 11 W. 3, c. 23. § 2. 3. the prosecutor of a felon to conviction is discharged from liability to serve as constable. A *foreigner*, though naturalized, is not liable to serve. *Rex. v. De Mierre, Burr.* 278. No man that *keeps a public house* ought to be made a constable, if there are other persons in the parish proper to serve. *Per Holt, C. J.* 6 *Mod.* 42.

How appointed, and how punishable for refusal to serve.

By the 33 G. 3, c. 2, § 10, it is enacted that it shall be lawful for justices of the peace, within the respective limits of their commissions, at their general quarter sessions in April, or the greater part of them, to nominate and appoint yearly, a sufficient, discreet, and proper person, to serve the office of high constable, in each and every district; and also to nominate and appoint such a sufficient number of persons as in their discretion will be necessary, to serve the office of constable, in each and every parish, township, reputed township or place; and the said constable and constables, before they enter into their office, shall severally take the following oath, to be administered by any justice of the peace :

You shall and well and truly serve our sovereign lord the king, in the office of — for the — of —, for the year ensuing, according to the best of your skill and knowledge.—So help you God.

And after such service, such persons shall be exempt from any of the offices mentioned in this act, for three years.

In all cases of necessity, it seems that the justices may appoint *special* constables. *Constable of Holmby's case*. 1 *Bac. abr.* 439. 2 *Keb.* 557.

If a constable, being duly appointed, refuse to take the oath, he may be indicted at the assizes or sessions, when, if found guilty, he may be fined, and in default of payment he may be committed. *Rex. v. Lane*, 2 *Str.* 920. But if he has once been allowed to appoint a deputy, who is approved of, he is altogether discharged. 3 *Esp. Rep.* But such deputy must be duly sworn. *Wood's Inst.* 6 c. 7.

Power and duties of the office.

The high constable has the superintendence and direction of all petty constables within his district, and he is, in a manner, responsible for their conduct, since he is bound to notice and present their defaults; for the defect of which duty he is, in fact, presentable himself.

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Every high and petty constable is, by the common law, a conservator of the peace. 2 *Haw. c. 8. § 6.* And he is bound to obey a Magistrate's warrant; and an indictment will lie against him for any disobedience in this respect. 2 *Haw. c. 10. § 35.* 1 *Salk. 280.* So he is authorised, without any warrant, to arrest all traitors, felons, and suspicious persons, and all those whom he shall see upon the point of committing treason or felony, or doing any act which would manifestly endanger life. 2 *Haw. c. 12. § 19.* 1 *Bac. Ab. 441.* In case of any breach of the peace committed, or one about to be committed, in the presence of a constable—as where violent threats or attempts are used by any person to beat or hurt another—the constable may arrest the party and carry him before a magistrate, or detain him till he can conveniently do so. *Dalt. c. 1. 116. § 3.* A constable has no power to execute a warrant out of the jurisdiction of the justice who grants it.—*Milton v. Green, 5 East. 233.*—unless backed by a magistrate of the district in which the offender is found. 24 *G. 2. c. 55.* Nor is he obliged to execute a warrant out of his district. — *v. Norman, 1 Ld. R. 736,*—and if he does he is not within the protection of the 24. *G. 2. c. 44,* and may be sued in trespass without the magistrate being made a defendant. *Milton v. Green. Supra.* A constable cannot imprison a person arrested by him for any longer time than till he can conveniently bring him before a magistrate. *Sav. 98. H. 92. 4 Com. Dig. Lect (M. 9.)* A constable (after giving notice that he is one) may break open the doors of a house to arrest a felon, if he be concealed therein, and a peaceable entrance is denied. 2 *H. P. C. 90. 82.* And if a person having actually committed a felony will not suffer himself to be arrested, but stands on his own defence, or flies, so that he cannot possibly be apprehended alive by those who pursue him, whether private persons or public officers with or without a warrant, he may be lawfully slain by them. 1 *Haw. 70.* So, if a felony hath actually been committed and an officer having lawful warrant arrest an innocent person, and such person assault the officer, the officer is not bound by law to give back, but to carry him away; and if in execution

of his office he cannot otherwise avoid it, but, in striving, kill him, it is no felony. 3 *Inst.* 56. Also, if a person arrested for felony break away from his conductors to gaol they may kill him if they cannot otherwise take him: but in this case likewise there must have been a felony committed. *Hale's Pl.* 36. 37.

The utmost caution and prudence, however, should be observed upon all such occasions, since nothing but *absolute necessity* will justify an officer in killing the party he may be in pursuit of.

If the officer have reason to apprehend resistance he may call to his aid any persons near him, who are bound upon his summons immediately to aid and assist in the King's name, and for their neglect or refusal so to do may be indicted. He may commit affrayers to the stocks on his own view—but not if absent. *Dalt. c. 1. Cro. Eliz.* 375. 376. He may imprison to prevent a felony. *Moore*, 284. And if one be menaced, he may compel the menacer to find surety, or commit him to prison till he does.—4 *Inst.* 265. *Cro. Eliz.* 375. 6. He may break open a house, when entrance is denied, to abate an affray, or to suppress disorderly drinking, or noise, at an unreasonable hour of the night. *Hale, P. C.* 95. He may imprison one who insults or assaults himself, or opposes him, though verbally, in the execution of his office, and may beat another in his own defence. *Crompt. J. P.* 131.—If a warrant be directed generally, “to bring before me, or some other justice,” he may carry the prisoner before what justice he chooses, in the district—but not if specially directed. 5 *Rep.* 596. He has no right to handcuff a prisoner, except he has attempted to escape, or that it is necessary in order to prevent an escape. 3 *Ma. Ca.* 299. He is responsible for the safety of any prisoner lawfully in his charge, and may be indicted for suffering such prisoner to escape—and this whether such escape be through negligence, or connivance. *R. v. Bootie.* 2 *Burr* 865,—and if the prisoner have been guilty of felony—it is felony in the constable to permit an escape. 1 *Hale* 596. Upon the escape of a prisoner, the officer may retake him wherever he finds him, although he may

fly into another district. 2 *Haw. c. 19 § 12*. And when the party shelters himself in a house, the doors may be broken to retake him, on a demand and refusal of admittance. 2 *Haw. c. 14. § 9*. But the officer is not justified in killing a prisoner in pursuing him after an escape, though otherwise unable to retake him. 1 *Haw. c. 28. § 11. 12*. He should seize the goods of felons who fly the country, for the King's use. *Crompt. J. P. 201*.—He is to aid and assist in the appraisement and sale of goods distrained for rent, and may swear the appraisers. 2 *W. & M. Sess. 1. c. 5*. He is also to aid landlords in seizing, as a distress for rent, goods fraudulently removed to avoid such distress, and may break open a house where in they are deposited—(oath being first made before a justice, of reasonable suspicion of their being there.) 11 *G. 2. c. 19*. Constables may seize a stranger guilty of profane cursing and swearing, and carry him before a justice; but if known, he must lay an information. 19 *G. 2. c. 21. § 3*. When on a warrant endorsed he apprehends an offender, he is to carry him before the justice who endorsed it; and if the offender find bail, he is to receive the recognizance, examination, &c. and deliver them to the clerk of assize, or clerk of the peace of the district where such offender is required to appear; and if the offender is not bailed, he is to carry him before a justice of the county where the offence was committed. 24 *G. 2. c. 55*. A Constable making a distress under a justice's warrant, shall, on demand, shew the same to the party, and permit a copy to be taken. 27 *G. 2. c. 20*. But if a constable be duly sworn, and commonly known to be an officer, and act within his own precinct, he need not shew the party his warrant, though he should demand it; but he ought to acquaint the party with the substance of it.—2 *Haw. c. 13*. 1 *East. P. C. 319*. He is not discharged from his office until his successor is sworn. 12 *Mod. 256*.

As the office of a constable is wholly ministerial, he may appoint a deputy to execute a warrant directed to him, when by reason of sickness, absence, or otherwise, he cannot do it himself. 2 *Haw. c. 10 § 36*. And such

Constable.

a deputy may be appointed by parol, and need not be sworn. *Medhurst v. Wate*, 3 Burr. 1259. But unless the deputy is duly allowed and sworn, the constable is answerable for him in case of any misconduct. *Wood's Inst.* b. 1. c. 7.— though, if duly sworn, the liability of the principal is at an end. *Underhill v. Wills*, 3 Exp. 56.

Indemnity and Protection.

An action against a constable for any act done in the execution of his office, must be brought in the district where the offence was committed, to which action he may plead the general issue, and give the special matter in evidence; and if he recover he shall have double costs. 21 Jac. 1. c. 12. This extends also to his deputy. *Crompt. J. P.* 201. And every man aiding a constable in the execution of his office, has by law, the same protection as the constable. 2 Hale, P. C. 97. A justice's warrant is a good justification of a constable, in any matter within the jurisdiction of such justice, but not otherwise. *Str.* 711.

By stat. 24 G. 2. c. 44. the constable is not answerable for the execution of a warrant, in case the magistrate who made it has no jurisdiction, if he complies with the requisitions of that statute: and by § 6. no action shall be brought against him or any person acting by his order and in his aid, for any thing done in obedience to a warrant under the hand or seal of a justice, until demand in writing hath been made or left at his usual place of abode, of the perusal and copy of the warrant, and the same hath been refused or neglected for *six* days after such demand; and if, after compliance therewith, any action shall be brought, without making the justice a defendant, the jury shall, on production of the warrant, give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. If the action be brought jointly against the justice and constable, the jury shall, on proof of the warrant, find for the constable, notwithstanding such defect of jurisdiction. By § 8. no action shall be brought against any constable acting in the execution of his office, unless commenced within six calendar months after the act committed: therefore if the constable prove that he acted in obe.

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dience to the warrant, it is then immaterial whether the warrant be legal or not. *Money v. Leach.* 3 Burr. 1766. And in no case is a constable bound to part with a warrant out of his own possession: for that is his justification under the 24. G. 2. c. 44, in case of any action brought against him. Consequently he is not required to return the warrant to the justice; for he cannot grant to the party the perusal of the warrant, as he is bound to do by that statute unless he hath it in his possession: it will be enough therefore, if he *certify* to the justice what he hath done in the execution thereof. *R. v. Wyatt*, 1. *Ld. R.* 1189. 1 *Salk.* 280.

If a constable acting under a distress warrant, seize the goods of A. mistaking them for the goods of B. he is entitled to the protection of the statute. *Parton v. Williams*, 3 B. A. 330. A constable who arrests a person given him in charge, is not liable to an action of false imprisonment, though the charge be ill founded, unless he make himself a party in oppressing the person so arrested, knowing the charge to be false. *White v. Taylor*, 4 *Esp.* 80.

Of his Punishment.

He may be fined or imprisoned, or both, for refusing to serve the office when appointed. *Arch. C. P.* 384. He is indictable for neglecting his duty, either at common law or by statute. 1 *Salk.* 381. And may be fined for not endeavouring to pacify an affray in his presence.—*Cromp. J. P.* 130. If he will not return his warrant, or what he has done under it (for he ought to keep the warrant for his own justification) the session may fine him. 6 *Mod.* 83. He is guilty of felony if he lets a felon out of the stocks. 1 *Hale, P. C.* 596. He may be removed for just cause by the authority which appointed him. *Bulst.* 174.

Of his Expenses.

By 46 G. 3. c. 5. justices in sessions may award such compensation as they may think proper to constables, for serving notices of the appointment of town officers, under that act. With the above exception, the provincial statutes

do not appear to have made any express provision for the payment of a constable's general expenses, but in practice it has been usual for the constable to present his account to the justices in sessions, who, after due examination and allowance, make an order upon the district treasurer for payment.

Form of appointment of a Deputy Constable.

I, C. D. Constable of — in the — district, do hereby make, substitute and appoint G. H. of — yeoman, my true and lawful deputy, in the office of constable, so long as I shall hold the same, (or during the continuance of my will and pleasure). Witness my hand, the — day of — in the year of our Lord 18—.

COURT OF REQUESTS.

(3 W. 4. c. 1.)

An Act to repeal part of, amend and reduce to one Act of Parliament the several Laws now in force in this Province, for the recovery of Small Debts; and to extend the Jurisdiction of the Court of Requests within the same.

Section 1. Repeals the former Acts on this subject.

2. *And be it, &c.* That from and after the first day of September next, it shall and may be lawful for any two or more commissioners, acting under and by virtue of a commission from the governor, lieutenant governor, or person administering the government of this province, who is hereby duly authorised and empowered to grant the same, under his hand and seal of office, to assemble, sit and hold a court of justice, to be called a court of requests, on the first and third Saturday of each month, at some place within their respective divisions, which divisions shall be ascertained and declared by the justices in quarter sessions assembled, or the greater part of them, at the general quarter sessions, which shall be holden first after the first day of April next; and the said commissioners for the time being, or any two or more of them, shall have

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power and authority, and are hereby authorised, empowered and required, to hear and determine all matters of debt or contract, when the demand doth not exceed the sum of ten pounds, and to give and pronounce such judgment and decree therein respectively, and to award execution thereupon, with such costs as are hereinafter specified, against the goods and chattles of all and every the person and persons against whom they shall give or pronounce any judgment or decree, as to them shall seem just in law or equity; and that the acts, orders, judgments and decrees of the said commissioners shall be final, between the parties thereto; *provided always*, that the commissioners hereinbefore mentioned, shall be appointed and hold their office during pleasure only.

3. *And be it, &c.* That so soon as the said divisions shall have been declared in each district as aforesaid, the same shall be numbered by the said justices in general quarter sessions assembled, beginning at number one, and continuing to the highest number of such divisions in each district, and shall be particularly described in a book to be kept for that purpose, and deposited in the office of the clerk of the peace.

4. *And be it, &c.* That the clerk of the peace in and for each district, shall transmit to the office of the governor, lieutenant governor, or person administering the government of this province, a copy of the book or list of divisions, from time to time declared as aforesaid, within the limits of the district of which he is clerk of the peace, describing them according to their respective numbers.

5. *And be it, &c.* That from and after the first day of September next, it shall and may be lawful for every person or persons, who then or thereafter may have any debt or debts owing to him, her or them, not exceeding the sum of ten pounds currency of this province, by any person or persons whatsoever, being an inhabitant of the district within which the court shall be holden, to cause such person or persons to be summoned by a writing under the hand of the clerk of the said court, who shall be appointed as hereinafter mentioned; a copy of which shall be left with some grown person at the dwelling-

house or usual place of abode of such person or persons, or by service of the same on the person of such debtor, to appear before the commissioners of the said court; and the said commissioners, after such summons as aforesaid, shall, upon proof of such copy of said summons having been so left or served, at least six days previous to the day of appearance, have full power and authority, by virtue of this act, to make or cause to be made, such acts, orders, decrees, judgments and proceedings, between such plaintiff and his, her or their debtors, defendants, touching such debt or debts, not exceeding the sum of ten pounds currency of this province, in question before them, as they shall find consistent with law or equity, and all such acts, orders, decrees, judgments and proceedings, shall be entered in a book to be kept for that purpose: *provided always*, that nothing in this act contained shall extend or be construed to extend, to authorise the summoning of any defendant or defendants before any court of requests, within any district other than that which shall be established by the magistrates in quarter sessions, as by law directed, for the division in which such defendant or defendants shall, at the time of issuing such summons, be resident: *and provided also*, that the court shall in no case give judgment against a defendant for a larger sum than forty shillings, unless it shall be proved to them that he has been personally served with the summons issued in such cause.

6. *And be it, &c.* That no barrister, attorney at law, or solicitor, being served with process of the said court, shall be allowed to plead or maintain any privilege against the process, authority, jurisdiction or judgment thereof; nor shall any barrister, attorney at law, or solicitor, have or maintain any privilege of bringing in a superior court an action upon any cause of action, which, from its nature, shall be properly cognizable in the court of requests.

7. *Provided always, and be it, &c.* That nothing in this act contained, shall extend or be construed to extend to authorise the holding plea in such court, for any gambling debt whatsoever, or for any spirituous liquors drank at a tavern: *provided also, and be it, &c.* that nothing in this act contained shall extend to give jurisdiction to any

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8. *And be it, &c.* That a statement of the particulars of the demand upon which any party shall sue in the said court of requests, shall be annexed to, or endorsed on every summons taken out, and served on the defendant or defendants, with such summons; to which bill of particulars the name of the plaintiff or plaintiffs bringing the suit shall be subscribed; and to the items contained in the said bill of particulars the said plaintiff or plaintiffs shall be required to confine his, her or their proof at the trial.

9. *And be it, &c.* That in order to prevent unnecessary expense, it shall and may be lawful for the said commissioners, or any one of them, at any time to give judgment, and cause the same to be entered, on the voluntary confession of any defendant, when the amount demanded does not exceed the jurisdiction of the said court; which confession may be in the form hereinafter set forth, and that judgment shall not be entered upon any such confession, in a case where no summons has been sued out by the plaintiff, until such plaintiff shall have made an affidavit to be endorsed on or annexed to the confession, declaring that the defendant, before giving that confession, did truly and bona fide owe him the amount therein specified.

10. *And be it, &c.* That in case any person or persons, shall make oath or give evidence in any cause depending before the said commissioners in the said court, whereby he, she or they, shall wilfully and corruptly forswear themselves, such person or persons shall, on conviction, suffer the pains and penalties inflicted on persons guilty of wilful and corrupt perjury.

11. *And be it, &c.* That the present courts of requests shall be and continue established until the first day of September next, and that all suits or controversies which shall remain unsettled, or which shall not have been finally disposed of in the several courts of requests in this province, shall, after the first day of September next, be transferred to the court of requests having the jurisdiction in such suit or controversy established by this act, together with all papers and proceedings relating thereto; which said

unsettled suits or controversies shall be proceeded in until finally disposed of by the court of requests having jurisdiction and established by this act, in the same manner that such unsettled suits or controversies would have been proceeded in if this act had not been passed.

12. *And be it, &c.* That this act shall extend to all new districts which may be hereafter created or set apart within this province, and that the justices of the peace in such new districts shall, at their first court of general quarter sessions to be by them holden, partition and set off the same into divisions, and do and perform all such other matters and things, in the same manner as is required by this act of the justices in the several districts now by law established.

13. And for the better discovery of the truth, and the more solemn determination of matters and causes which shall be depending in the said court: *Be it therefore, &c.* That it shall and may be lawful for the said commissioners, or any two or more of them assembled in court as aforesaid, and they are hereby authorised and empowered to administer or cause to be administered an oath or oaths to the plaintiff or plaintiffs, defendant or defendants respectively, and to such witness or witnesses as shall be produced by each party, and also to all or any of the officers of the said court, and to all other persons whatsoever, for or concerning any business relative thereunto, and to take the affirmation or affirmations of such plaintiff or plaintiffs, defendant or defendants, witness or witnesses, or other persons as aforesaid, who are or shall be of the people called Quakers, or of such other denomination of christians as are allowed to give evidence on their affirmation: *Provided always*, that although the court may for their better satisfaction and for the discovery of the truth, require the plaintiff or defendant to be examined on oath or affirmation, they shall in no case give judgment for either party in any cause for more than forty shillings, or allow or disallow any set off to a greater amount than forty shillings, on the mere oath or affirmation of the plaintiff or defendant respectively, nor without sufficient evidence to warrant such judgment, independent of such oath or affirmation.

14. *And be it, &c.* That no person or persons shall be capable of acting as a commissioner or commissioners in the execution of the power given by this act, until he or they shall respectively have taken an oath to the effect following :

“I, A. B. do swear that I will faithfully, impartially, and honestly, according to the best of my judgment, hear and determine such matters and things as shall be brought before me as a commissioner of the court of requests of division number —, constituted and established under and by virtue of an act of the legislature of this province, entitled ‘an act to repeal part of, amend and reduce to one act of parliament the several laws now in force in this province for the recovery of small debts, and to extend the jurisdiction of the court of requests within the same,’ without favor of affection to either party.—So help me God.”

Which oath may be administered by any justice of the peace, and shall be by such justice transmitted to the clerk of the peace of the district in which the division for which such commissioner shall have been appointed shall be situated.

15. *And be it, &c.* That from and after the passing of this act, it shall be the duty of the commissioners of each court of requests to appoint a fit and proper person to discharge the duties of clerk, who shall be subject to be removed from his office by the commissioners, or a majority of them, for the time being, and whose duty it shall be to issue all summonses, subpoenas, executions and other process necessary to be issued out of the said court, to receive from the bailiffs all money collected under this act, and to pay the same over to the parties to whom it was decreed, and to keep a faithful record in a suitable book to be by him provided for that purpose, (which book shall be the property of the district,) of all the proceedings of the court for which he may be appointed, and which clerk shall, before he enters upon the duties of his office, take the following oath :

“I, A. B. do swear, that I will well and truly perform and fulfil all duties belonging to the office of clerk of the

court of requests for the —, and will faithfully make, enter and preserve all proceedings and remembrances of the said court, to the best of my skill and ability.”—So help me God :—*Provided always*, that no clerk so appointed shall enter upon the duties of his office, until he shall have given security to the commissioners in the sum of one hundred pounds, for the proper performance of his duty, that is to say, shall enter into the covenant hereinafter mentioned, binding himself without limitation as to amount with two or more sureties to such amounts severally as shall together make up one hundred pounds, such sureties to be persons sufficiently responsible in the judgment of the commissioners, and it shall also be the duty of the said commissioners and they are hereby empowered to appoint one or more fit and proper persons to discharge the duties of bailiff, according to the provisions of this act ; which bailiff or bailiffs shall give security in the same manner and to the same amount as the clerk of such court, and shall hold his office during the pleasure of the commissioners who, or a majority of them, may in their discretion remove such bailiff and appoint another in his stead.

16. *And be it &c.* That the security to be given by every clerk or bailiff of any court of requests in this province, shall be in the following form, or to the like effect, that is to say :

Know all men by these presents, that we A. B. clerk, or bailiff, (as the case may be) of division number —, in the district of —, C. D. of the district of —, and E. F. of —, in the district of — (when more sureties here insert their names) do hereby jointly and severally covenant and promise that A. B. clerk, or bailiff, (as the case may be) of the — division as aforesaid, shall well and truly pay over to the person or persons entitled to the same all such monies as he shall receive by virtue of his office of clerk, or bailiff, (as the case may be) from the date of this covenant, during his continuance in office, and that he shall not within that period negligently or wilfully misconduct himself in his said office of clerk, or bailiff, (as the case may be) nevertheless it is hereby

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declared that no other or greater sum shall be recovered against the sureties respectively, then as follows, that is to say :

Against C. D.

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If other sureties add them in like manner.

In witness whereof we have hereunto set our hands and seals the ——— day of ———

L. S.

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Signed, sealed and delivered, in presence of ———.

17. *And be it &c.* That any person or persons who may be injured, delayed or damaged by the negligent or wilful misconduct of any clerk or bailiff of any court of requests, shall and may sue upon such covenant in his own name, and the commissioner or commissioners of such court are hereby authorised to give such judgment thereon as to them shall seem just in law and equity, not exceeding in amount the sum to which their jurisdiction is limited: *Provided always*, that nothing herein contained shall prevent the bringing any action upon such covenant in a superior court for a cause of action beyond the jurisdiction of the court of requests.

18 *And be it, &c.* That every bailiff appointed by the commissioners of any court of requests, shall attend at the sittings of such court at ten o'clock of the day on which any process or execution shall have been made returnable, and it shall and may be lawful for the said commissioners to administer, and they are hereby authorised to administer, an oath to such bailiff, to the effect following, that is to say :

“ You, A. B. bailiff of division number — of the court of requests, in the — district, shall truly answer all such questions as shall be put to you by the court, touching the service or execution of any writ or process issued from this court which may have been placed in your hands, and returnable here this day.—So help you God.”

19. *And be it &c.* That whenever any plaintiff or plaintiffs who may hereafter bring an action in the court of requests shall fail to appear or otherwise establish his, her, or their claim, either in his, her or their own person or persons, or by agent, at the time specified in the summons, it shall be the duty of said commissioners to give judgment against such plaintiff or plaintiffs for all costs attending the same, as also such sum to compensate the defendant or defendants for loss of time in attending the said court as the said commissioners (unless they shall find such failure to have occurred with the assent of, or upon a previous understanding with the defendant) may deem just and equitable.

20. *And be it, &c.* That in all actions which may hereafter be brought before the commissioners of the court of requests, if it shall be proved to the satisfaction of the court that the claim of the defendant exceeds that of the plaintiff, it shall be the duty of the said commissioners, and they are hereby required, to enter judgment in favor of the defendant for such balance as may appear to be due to the said defendant, together with costs: *Provided always*, that no sett off shall be allowed to be given in evidence before such commissioners which shall exceed the amount of ten pounds: *And provided always*, that if the plaintiff shall contest such sett off, it shall be incumbent upon the commissioners to suspend judgment, and to admit both parties on the next or other subsequent court day to produce evidence respecting the same, unless the defendant shall satisfy the commissioners, by evidence on oath, that he did, four days before the return of the summons issued against him, serve the plaintiff with a statement of the particulars of his sett off, signed by the defendant, in which case the commissioners may on the first day appointed for the trial hear and determine the same, adding the sett off to the items specified in such bill of particulars.

21. *And be it, &c.* That if any witness or witnesses necessary in any trial live out of the division where any case may be tried, but within the district in which such division is situated, then, and in such case, he, she or

they may be subpoenaed in like manner as if he, she or they lived within such division, but no cost shall be allowed for such witness against the opposite party, unless the commissioners shall find that his evidence was necessary to make out the case of the party calling him.

22. *And whereas* it is customary among the people of this province to contract for the payment of a certain specified amount, or of certain sums, in produce or labor, or in some manner otherwise than in money, and doubts may arise with the commissioners acting under this act whether they can adjudge such amount or sums to be paid in money: *Be it therefore, &c.* That in any such case, after the day is past in which the produce or goods should have been delivered, or other thing should have been done, it shall be in the power of the court, if they find it just in other respects, to give judgment for the amount in money, as if the debt or agreement had been for money.

23. *And be it, &c.* That all fines levied under the provisions of this act shall be by the commissioner or commissioners of every court of requests, paid over to any overseer or overseers of highways in the division wherein such fine or fines shall have been levied, and such overseer or overseers are hereby authorised and required to expend the same in the same manner as other monies coming into their hands to be expended on the highways, and shall render an account thereof within three months after the expenditure thereof, to the commissioner or commissioners from whom he shall have received the same, and such commissioner or commissioners are hereby required to make a return of such fines and expenditure to the ensuing quarter sessions.

24. *And be it, &c.* That if any person shall use contemptuous or insulting language to the commissioners aforesaid, while discharging the duties imposed upon them by this act, or shall in any manner disturb the proceedings of any court of requests, it shall and may be lawful for the said commissioners to imprison such offender or offenders in the common gaol of the district, for a period not exceeding six days, or impose a fine not exceeding two pounds, at the discretion of the commissioners, such

fine to be levied and collected in a summary way, by warrant of distress, to be issued by the said commissioners, directing the same to be made of the goods and chattels of the offender.

25. *And be it, &c.* That when any execution shall be issued out of the said court, against any defendant or defendants, or against any plaintiff or plaintiffs, and sufficient goods and chattels of the party or parties against whom such execution shall have been issued, shall not be found within the division where such cause shall have been tried, to satisfy the same, then and in such case it shall and may be lawful to levy the amount of such execution or the balance thereof, of the goods and chattels of such party or parties, in any other division within the same district, and the clerk of the court from whence the same issued, may direct another execution for the amount due, to the bailiff of the same division, or the bailiff of the division in which the execution is to be enforced: *Provided always*, that the bailiff of the division in which judgment was entered, shall not be compelled to go out of his division, nor shall the cost of travelling from one division to another, be taxed against the person against whom the execution shall be issued.

26. *And be it, &c.* That when any judgment in the said court shall exceed the sum of forty shillings, it shall not be lawful for the said commissioners to issue any execution thereon, until the expiration of forty days from the time of giving and recording such judgment, unless the party obtaining judgment shall make it appear by his own oath, or other testimony, to the satisfaction of the commissioners, that he will be in danger of losing the debt in consequence of such delay, in which case, and also in the case of any judgment against a clerk or bailiff, for monies received by him and not paid over, it shall be lawful for the said commissioners, or any one of them, to order the issue of execution at such time as he may think fit.

27. *And be it, &c.* That no bailiff shall proceed to the sale of any effects taken by virtue of any writ of execution issued by a court of requests, unless public notice in writing be given at least eight days before such sale, at

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the most public place in the town or township where such effects may have been taken in execution, of the time and place where such effects are to be exposed to sale.

28. *And be it, &c.* That if any action shall hereafter be brought in any of the superior courts, which might have been tried in the court of requests, no higher costs shall be taxed to the plaintiff than would have been recoverable in the court of requests, unless it shall be shewn to the court, or to a judge thereof, in vacation, that from the nature of the plaintiff's evidence, or the situation of his witnesses, he could not have proved his case in the court of requests, or unless in the action in the superior court, the defendant shall have been arrested.

29. *And be it, &c.* That whenever either of the parties to any cause shall apply for an adjournment, in consequence of the absence of some material witness, or for other sufficient reasons shown upon oath to the satisfaction of the court, it shall be the duty of the commissioners to grant the application upon the payment of reasonable costs by the party applying for such adjournment.

30. *And be it, &c.* That the several fees and sums of money hereinafter limited and expressed, and no more shall be taken.

Commissioner's Fees.

For every final judgment—two shillings.

Clerk's Fees.

For recording judgment—sixpence.

For every summons or subpoena—sixpence.

For every copy of judgment (if demanded) one shilling.

For every execution—one shilling.

Bailiff's Fees.

For serving every summons or subpoena within one mile of the clerk's house—one shilling.

For every mile in travelling to execute process, or execution, where the distance exceeds one mile—four pence.

For serving a writ of execution, seizing and selling effects, and making return, if the judgment does not exceed five pounds—two shillings and six pence.

Ditto, ditto, if judgment exceeds £5, in like proportion.

The allowance to be paid to all and every of the witnesses, to be left to the discretion of the commissioners, but not to exceed 2s 6d. per day, to each.

31. *And be it, &c.* That the following forms may be used by the commissioners of the court of requests.

In the Court of Requests.

—— District, }
Division, No. — }
to wit.

To

plaintiff,
defendant,
the defendant.

You are hereby summoned and required to be and appear before the commissioners of His Majesty's court of requests, to be held at —— in the township of —— by eleven o'clock in the forenoon, of Saturday the —— day of —— to answer the demand of —— for —— pounds —— shillings and —— pence of lawful money of this province, which he claims from you, and a statement of which claim is hereunto annexed.—Herein fail not, as judgment will be given against you for default.

Witness —— A. B. clerk of the said court, this —— day of ——.

In the Court of Requests.

—— District, } To
Division, No. — }
to wit.

You are hereby summoned and required to be and appear before the commissioners of His Majesty's court of requests to be held at —— in the

town of — on Saturday the — day of — at — o'clock in the forenoon, to testify the truth according to your knowledge in a certain cause then and there to be tried, between — plaintiff, and — defendant, on the part of the —. Herein fail not at your peril.

Witness — A. B. clerk of the said court, this — day of — in the year of our Lord one thousand eight hundred and thirty —.

To A. B. Bailiff.

— District, } You are hereby authorised and required to make of the goods and chattels of — in the said district, the sum of — provincial currency, to satisfy a judgment given by the court of requests, held in division number — in the said district, on Saturday the — day of — at the suit of — in the plea of debt heard against the said — together with the sum of — being the cost of said suit; and should there be any overplus after deducting the legal expenses of the seizure and sale, you are to return the same to the said — and you are to certify to the said court on Saturday the — day of — what you shall have done in the execution hereof. Herein fail not.

Witness — A. B. clerk of said court.

Debt.....	}
Costs	
Bailiff's Fees	

In the Court of Requests,

I. — of the town of — in the — district, do hereby acknowledge that I am justly indebted to — in the sum of — being the amount due to — on a note, account, or contract, (as the case may be) and I do consent that judgment be forthwith entered against me for the said sum with the costs, but no execution to be issued until the — day of — next.

Witness

(*Form of the Oath to be Administered to a Witness.*)

"The evidence you shall give to this court, touching the matter in question, shall be the truth, the whole truth, and nothing but the truth. So help you God."

HIGHWAYS.

A HIGHWAY is a public passage for all the king's liege subjects, for which it is denominated in legal proceedings, the king's highway. *Deacon's C. L.* 567. A way may also become a public highway by a dedication of it by the owner of the soil to the public use; and eight years, without any impediment, has been held sufficient dedication. 11 *East.* 375.

All injuries to a highway—as by digging a ditch, or making a hedge across it, or laying logs of timber in it, or by doing any other act which renders it less commodious, are public nuisances at common law, and indictable. 1 *Haw. c.* 76 § 144. On an indictment for obstruction to a highway the judgment of the court is usually a fine, as well as an order on the defendant to abate the nuisance.

By statute 50 G. 3. c. 1. § 2. entitled, "an act to provide for the laying out, amending, and keeping in repair, the public highways and roads, and to repeal the laws now in force." Justices in sessions in April, in every year, (except in the districts of London and Johnstown; and in London in June, and Johnstown in May,) are to appoint one or more surveyors of the highways in each county and riding, to lay out and regulate the highways and roads within such county or riding, who shall take the following oath, to be administered by the said justices:—I, A. B. do swear that I will faithfully and diligently discharge the duty of a surveyor of highways, agreeably to the provisions of an act passed in the 50th year of his majesty's reign, entitled "an act to provide for the laying out amending, and keeping in repair, the

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public highways and roads in this province, and to repeal the laws now in force for that purpose." So help me God.

And upon complaint made to the sessions of the incompetency of such surveyor, he shall be removed. § 3. Upon application, in writing, by twelve freeholders of any such county or riding, that any public highway is inconvenient, and may be altered so as better to accommodate his majesty's subjects and others travelling thereon, or that it is necessary to open a new highway or road, the surveyor is required to examine the same and report thereon, in writing, to the justices at their next quarter sessions, describing the alteration intended to be made, or new highway or road to be opened, giving public notice thereof by affixing a copy of such report in two or more most public places next to the place where the alteration is intended to be made; and if no opposition be made to such report, the justices shall confirm the same, and direct such alteration, highway or road, to be made accordingly; and in case of opposition, and proof of due notice to the surveyor, the justices shall direct a jury of twelve disinterested men to be empannelled as jurors, who after hearing evidence upon oath, shall upon their oath, confirm or annul the said report, or alter and modify the same as the case may require, and their verdict shall be final; and the said justices shall direct such highway or road to be altered or opened accordingly, and the same shall be a common and public highway; but it shall not be lawful for such highway to lead through any orchard or garden or to remove any building, without the owners consent. § 4. Justices in sessions, if necessary, may employ a surveyor of lands to lay out or alter such highway or road, who shall be paid out of the district treasury at 10s. a day. (Sec. 5. repealed by 4 G. 4 c. 10. § 1.)

§ 8. Seven shillings and six pence a day to be paid to the surveyor while necessarily employed, to be ordered by justices in sessions, and paid by the treasurer of the district. § 9. The surveyor may sell the land through which an old road has passed, (except government allowances (see 4 G. 4. c. 10. § 7,) and grant the same to any

purchaser under his hand and seal, unless the owners of the land through which the road shall pass are willing to take the same as a compensation, in such case the surveyor shall convey the same accordingly. § 10. The price of the land sold shall be paid to the owner of the land through which the new road shall pass, and if not satisfied the surveyor shall report such further claim at the next sessions, and give notice to the owner to appear, and a jury of twelve disinterested persons shall, upon oath, determine whether any, and what further sum shall be paid: such verdict to be final; and any further sum awarded shall be paid on an order from the justices by the treasurer of the district. § 12. All allowances for roads, by king's surveyors, and all roads under any act of parliament, or any roads whereon the public money has been expended or statute labour done, or any road passing through Indians lands, shall be deemed common and public highways, unless any have been altered according to law. § 34. Actions to be commenced within three calendar months. General issue may be pleaded, and special matter given in evidence, with treble costs to the defendant if plaintiff shall become nonsuit, or verdict for defendant. § 35. Freehold and soil of highways to be vested in his Majesty.

By 52 G. 3. c. 10. when any roads shall be laid out under the authority of the 8th clause of the 50 G. 3. that shall not be confirmed by the justices in quarter sessions, the surveyors charges shall be paid by the party applying for such survey.

By 59 G. 3. c. 8. § 2. every person included in the assessors roll shall work on the highways in proportion to such assessment, viz :

	DAYS.
If his property be not rated at more than £25,.....	2
If at more than £25, and not more than £50,	3
If at more than £50, and not more than £75,	4
If at more than £75, and not more than £100,	5
If at more than £100, and not more than £150, ...	6
If at more than £150, and not more than £200, ...	7
If at more than £200, and not more than £250, ...	8

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If at more than £250, and not more than £300,...	9
If at more than £300, and not more than £350,...	10
If at more than £350, and not more than £400,...	11
If at more than £400, and not more than £450,...	12
And for every £100 above £500, till it am'ts to £1000	1
And for every £200 above £1000, till it am'ts to £2000	1
And for every £300 above £2000, till it am'ts to £3500	1
And for every £500 above £3500,.....	1

Provided, that every person possessed of a wagon, cart, or team of horses, oxen, or beasts of burthen or draft, used to draw the same, shall be liable to work on the highways not less than three days. § 3. Lands subject to assessment, but not included in the assessment, shall be rated at one eighth of a penny per acre, annually, for amending the roads, to be levied and collected as other rates and assessments. § 4. The treasurer may receive such rates, and the collector may proceed to distress and sale. § 5. Such rates to accumulate one third if in arrear three years; one-half for five years; and double, if eight years; and thenceforward in double the amount. § 6. The treasurer to keep an account. § 7. Collector to pay over receipts to the treasurer, retaining 5 per cent. § 8. Warrant of distress, 2s 6d.; mileage, 4d.; sale and return, 2s. § 9. Justices, at any special or petty sessions, may, upon application, exempt any indigent person not rated more than £25, or poor emigrants intending to become settlers, and not resident six months in the province, having first given notice to the overseer, from statute labour on the highways, and all composition in lieu thereof.

By 4 G. 4. c. 9. § 1. the 59 G. 3. is made perpetual. § 2. Any person liable to perform statute labour, (except such as being resident in any town, shall be liable to perform more than six days labour) may compound for such duty at 2s 6d per day. § 3. And any person resident in any town, and liable to more than six days labour in any one year, shall, in lieu of labour, pay to the surveyor of streets, to be appointed as hereinafter mentioned, on or before the first of May in each year, 2s 6d for each day's duty. § 4. Justices of the peace in sessions, or at any ad-

journed sessions, may appoint a surveyor of streets in and for each town, and remove such officer at their will and pleasure. § 5. Such surveyor of streets shall, before entering upon office, take an oath, in open court, that he will well and faithfully execute the duties thereof, (repealed in part, by 8 G. 4, c. 14,) and shall, with two sureties, to be approved by such justices, enter into a bond to his Majesty, his heirs and successors, in such sum as to the justices may seem meet, to account for all moneys he may receive. § 6. Justices may, at any special sessions holden for the purpose, order the street surveyor to amend any street; and the surveyor shall, within ten days, summon persons liable to statute labour, and order them to work thereon, under the like penalty for neglect or refusal imposed by any former act. § 7. Commutation money may be also expended on such streets; § 8, and in repairing any highway or bridge in the vicinity of the town; § 9, and the surveyor so acting shall be discharged from any action of trespass. § 11. Justices in quarter sessions may order remuneration to the surveyors of streets, to be retained by such surveyors out of monies received by them. § 12. If any person liable to pay money in lieu of statute labour shall neglect to pay the same to the surveyor of streets authorised to demand the same, within ten days after demand, it shall be lawful for any two justices, upon proof on oath, to issue their warrant for levying double the amount, with costs, by distress and sale. § 13. The treasurer shall pay to the order of the magistrates in sessions, in March, all such money as may have been collected by the rate of one-eighth of a penny per annum, to be laid out by the said justices by contract or otherwise, to the best advantage, on the highways within the township where the land lies.

By 4 G. 4, c. 10, § 2, no road shall be more than 66, nor less than 40 feet wide; but not to affect roads now established. § 3, if any road shall be altered, the new one shall not be less in width than the old. § 6. When application is made where any road is laid out or altered, those making it (after sale of the old road, and proceeds paid to the owner,) shall be liable to pay any sum which a jury, as by law directed, shall ascertain; if the owner, agent, &c. shall

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within three months from the date of the report of such new road, &c. make application for compensation according to law, no order shall issue for statute labour thereon, unless a discharge or acquittal for the same ; or release for the land taken for such purpose from the owners ; or proof of a tender of the value so ascertained, be produced to the quarter sessions; but nothing in this act shall prevent the said justices directing payment out of the district money, if it shall appear that the alteration is of manifest public utility, and not merely local. § 7. repeals 9th clause of the 50 G. 3. so far as regards government appropriations ; but this clause is not to restrain any surveyor of highways from selling and conveying any road which he is now authorised to do.

By 8 G. 4. c. 14. so much of the 4 G. 4. c. 9. as requires the oath of street surveyors for towns to be taken in open court, (except those towns in which the court is holden) is repealed. Sec. 2. such street surveyors may take the oath, and give the required security, before any justice of the peace in which such towns shall be situated. Sec. 3. Such justice shall transmit the same to the clerk of the peace.

Application to a Surveyor, for altering or opening a Road &c.

To Mr. A. B. surveyor of the township of — in the district of —

We, the undersigned, freeholders of the township of — in the said district, do hereby respectfully state, that the public highway leading from [*here describe the road*] in the said township, and in the neighbourhood of us the said freeholders, now in use, is inconvenient, and may be altered so as better to accommodate his Majesty's subjects, and others travelling thereon, by, &c. [*here describe the proposed alteration ; or, if intended to open a new road, say after the word "inconvenient"—and that it is necessary to open a new road, for the better accommodation of his Majesty's subjects, &c. ; and that such new road should be, &c. —[here describe the proposed route.]* And we do hereby require you the said surveyor, to examine the same, and

report thereon, in writing, to the justices, at their next general quarter sessions of the peace for the said district.

Witness our hands, the — day of — 183—.

Surveyor's Report thereon.

To the Justices of the Peace at their general quarter sessions, to be held at — in and for the district of — on the — day of —.

I do hereby certify to the said court of quarter sessions, that I have examined the road mentioned and referred to in the within written notice, and that I approve of the following alteration being made [describing the same] or, that I recommend a new road to be made [describing the same].

Witness my hand the — day of — 18—.

Notice thereof.—Pursuant to the Statute.

Notice is hereby given, that I, the undersigned A. B. surveyor of the township of — in the — district, having been duly required to examine and report upon a proposed alteration of the public highway or road leading from — to — in the said township, have examined the same, and intend to make my report thereon in writing, to his majesty's justices of the peace, at the next general quarter sessions of the peace to be holden at — in and for the said district, on — the — day of — and that the following is a copy of my report, intended to be made as aforesaid. [*Here give a copy of the report.*] Witness my hand the — day of — 183—.

A. B. Surveyor.

Notice of Opposition.

To Mr. A. B. Surveyor of the township of — in the — district.

Take notice, that at the next general quarter sessions of the peace to be holden at — in and for the said district, I, (or we) shall oppose the alteration of the public highway or road leading from — to — in the said

town
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township, mentioned in your report, dated the — day of —. Witness my (or our) hand the — day of — 183—.

Order for altering or opening a Road.

Home District } At the general quarter sessions, &c.
to wit. } Upon the application of — freehold-
ers of the township of — in the said district, for the
alteration of the public highway or road leading from —
to — in the said township, [or for a new road, &c.]
and upon considering the report of A. B. surveyor of the
said township duly made thereon, and no opposition being
made thereto—It is ordered that [*here describe the altera-
tion, &c.*]

The like where Opposition is made.

And such alteration having been opposed, and thereupon
a jury impannelled and sworn, pursuant to the statute in
such case made; and such jury having heard evidence
upon oath, touching the premises, and by their verdict
confirmed (or annulled) the said report.—It is ordered &c.
or where a modification is determined upon,—and by their
verdict confirmed the said report, subject to such altera-
tion and modification as hereinafter is expressed.—It is
ordered. &c.

Conveyance, by the Surveyor of the old Road.

Know all men by these presents, that I, A. B. of the
township of — in the district of — surveyor of
the said township, for and in consideration of the sum
of — of good and lawful money of Upper Canada,
to me in hand paid by G. M. of — in the said dis-
trict, yeoman, the receipt whereof I do hereby acknow-
ledge, have granted, bargained, sold and conveyed, and
by these presents do, as such surveyor as aforesaid, grant,
bargain, sell and convey, unto the said G. M., his heirs and
assigns, all that parcel of land, late being the public high-
way or road leading from — to — commencing at &c. and
ending at &c. containing by admeasurement, — acres, or
thereabouts, [*an accurate description, with abutments, should be
inserted*] To have and to hold the said parcel of land and pre-

mises, hereby granted and conveyed, with all their appurtenances, unto and to the only proper use and behoof of the said G. M. his heirs and assigns for ever. In witness whereof, I have hereunto set my hand and seal, the ——— day of ——— 183—.

To A. B. Surveyor of the township of ——— in the district of ———

I, the undersigned, B. D. do hereby signify to you, the above named surveyor, that I am not satisfied with the payment of the sum of ——— being the money arising from the sale of the late highway or road in the said township, as an idemnification for the land through which the new road passes, and of which I was the owner; and I claim the sum of ——— as a further compensation for the same.

Witness my hand, the ——— day of ——— 183—.

Notice by the Surveyor to the Owner, to appear at the Sessions.

To Mr. B. D. of the township of ——— in the district of ———

Take notice, that you are hereby required by me, pursuant to the statute in such case made and provided, to appear at the next general quarter sessions of the peace, to be holden at ——— in and for the said district, when your claim of ——— for further compensation for the land comprising the public highway or road lately made through your land, will be inquired into and determined according to law.

Witness my hand, the ——— day of ——— 183—.

Order for Compensation.

At the General Quarter Sessions, &c.

At this sessions, B. D. of the township of ——— in the said district, yeoman, having appeared pursuant to notice to him given, by A. B. surveyor of the said township, respecting his claim for further compensation for the land now comprising the public highway or road lately made upon his land, viz. the road leading from ——— to ——— in the said township; and a jury having been at

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this sessions impannelled thereon and sworn, pursuant to the statute in such case made and provided, and by their verdict determined that the further sum of ——— should and ought to be allowed to the said B. D. for the said land—It is ordered, that the treasurer of the district do pay him the same accordingly.

INNS AND INN-KEEPERS.

Any inn-keeper suffering any inhabitant in any city or town &c. to continue drinking or tippling therein, (except such as be invited by a traveller; and except labourers and handicraftsmen, upon working days, for one hour, at dinner time; and except labourers lodging at such inn; and except for urgent occasions to be allowed by two justices) shall forfeit 10s. to the poor, upon conviction before one justice, on the oath of one witness; 1 J. c. 9, § 2. 1 C. c. 4. 21 J. c. 7; to be levied by the constables or churchwardens; and for default of satisfaction in six days, the distress to be appraised and sold; and for want of distress, the offender shall be committed to gaol until the penalty be paid; 1 J. c. 9, § 3; and shall be disabled, for the space of three years, to keep any such ale-house. 21 J. c. 7, § 4. And if any person (except as above, 1 J. c. 9,) shall continue drinking or tippling in any inn or ale-house, &c. he shall, on conviction before the mayor, or a justice of the peace, on view, confession, or oath of one witness, forfeit for every offence 3s. 4d. to be paid within one week next after such conviction, to the churchwardens, for the use of the poor; and if he shall neglect, it shall be levied by distress; and in default of distress, the court may order the offender to be set in the stocks for the space of four hours. 4 J. c. 5, § 4, c. 9. 21 J. c. 7. 1 C. c. 4. And if any ale-house keeper shall be convicted of tippling, he shall moreover, for the space of three years be disabled to keep any such ale-house. 7 J. c. 10. 21 J. c. 7, § 4.

Every person who shall be drunk, and be convicted thereof before one justice, on view, confession, or oath of one witness, shall forfeit for the first offence 5s. to be paid within one week after conviction to the churchwardens, for the use of the poor, or levied by distress; and in default, he shall be committed to the stocks for six hours. 4 J. c. 2, § 2. 21 J. c. 7, § 1, 3; and after a second conviction, the offender shall be bound, with two sureties, in a £10 recognizance, with condition to be from thenceforth of good behaviour. 4 J. c. 5, § 6. 21 J. c. 7, § 3. If any ale-house keeper shall be convicted of being drunk, he shall, besides the penalties, be utterly disabled to keep any such ale-house for the space of three years. 7 J. c. 10.

Detaining Goods for the Reckoning.

An inn-keeper may detain the person of the guest who eats, or the horse which eats, till payment. *Bac. abr. Inns.* But a horse committed to an inn-keeper, may be detained only for his own meat, and not for the meat of the guest, or of any other horse. *Ib.* 1 *Bulst.* 207. An inn-keeper that detains a horse for his meat, cannot use him. *Bac. Abr. Inns.*

Goods of a Guest Stolen out of an Inn.

An inn-keeper is answerable for those things which are stolen within the inn, though not delivered to him to keep, and though he was not acquainted that the guests brought the goods to the inn; for it shall be intended to be through his negligence, or occasioned by the fault of him or his servants. 8 *Co. Caley's case.* So, if he puts a horse to pasture without the direction of his guest, and the horse is stolen, he must make satisfaction; but otherwise, if with his direction. *Ib.* In like manner, if an inn-keeper bids his guest take the key of his chamber and lock the door, and tells him that he will not take charge of the goods, yet if they are stolen, he shall be answerable; because he is charged by law for all things which come to his inn; and he cannot discharge himself by such or the like words. *Dalt. c. 56.* A person is a guest who merely leaves his horse at an inn, as much as if he had staid himself, be-

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cause the horse must be fed, by which the inn-keeper has gain ; otherwise, if he had left a trunk or a dead thing.— 1 *Salk.* 388.

Inn-keepers License &c.

By an ordinance of the Province of Quebec, 28 G. 3, every person taking out a license for the purpose of retailing wine, &c. shall enter into a bond, with sufficient sureties, to keep an orderly and decent house.

By the 33 G. 3, c. 13, § 3, the words "*licensed to sell wine and other spirituous liquors,*" shall be written, painted, or printed, over the door of such house of entertainment, under the penalty of 5s. § 4. And persons taking out a license, shall enter into a £10 bond to the king, well and truly to keep a decent and orderly house. § 5. And pay 2s. 6d. for the license, and 2s. 6d. for the bond.

By the 34 G. 3, c. 12, § 2, no license shall be granted for an inn or public house, unless the person applying shall first have a certificate of his being a proper person, from the magistrates of the division where he resides, or is about to reside. All licenses otherwise granted shall be void. § 3. (Repealed by 59 G. 3, c. 2.) § 4. No certificate to obtain such license shall be granted to any person not previously licensed, without a testimonial of good character, under the hands of the parson and church or town wardens, or of four reputable and substantial householders, and inhabitants of the division where the said inn or public house is to be kept ; and that he has taken the oath of allegiance. § 5. Such license may be afterwards assigned, upon the party dying or removing, by an endorsement on the back thereof, executed in the presence of a magistrate ; and the assignee, within thirty days after such death or removal, obtaining testimonial as aforesaid, to be produced at the next division meeting, otherwise, at the expiration of such thirty days, license to be void. § 6. Every person obtaining such certificate, shall enter into the recognizance required by the 33 G. 3, c. 13, to be transmitted to the clerk of the peace of the district, to be filed ; and a list of persons under such recognizances, shall be laid before the quarter sessions next ensuing the 5th

April, yearly; and upon complaint made of such recognizance being forfeited, by an act of misdemeanor, any one justice may summon the party to appear at the next quarter sessions, and bind over the party making the complaint; and the misdemeanor charged shall be tried by a jury, and if a verdict of guilty be given, the justices shall estreat such recognizance into his majesty's court of king's bench, and the offender shall be disabled from holding a license for three years.

By 36 G. 3, c. 3, any person keeping an inn or public house, for the purpose of vending wine, brandy, rum, or other spirituous liquors, without a license, shall forfeit £20, upon being convicted on the oath of one witness, in the manner and form mentioned in the 34 G. 3, c. 12.

By the 59 G. 3, c. 2, it is enacted, that it shall be lawful for the justices, in general quarter sessions assembled, in each and every district, at their meeting next before the 5th January, in each year, to adjourn the sessions to the last Monday in December, at which adjourned sessions they shall have power to limit the number of inns and public houses, and hear and receive applications for others; and the said justices shall, upon receiving any such application, inquire into the character of the applicant, and if satisfactory, the presiding magistrate shall grant him a certificate under his hand and seal, which certificate shall enable the party to take out a license, on or before the 5th January next ensuing, on payment of the duties imposed by this act. § 4. Upon granting such certificate, the justices shall direct the inspector to take such sum as the justices or a majority of them shall adjudge just and proper, according to the situation of such inn, not exceeding £10, (by the 11 G. 4, c. 9, § 4) nor less than £2 16s. § 5. Persons desirous of keeping an inn, may apply for such certificate at any time during the year, to the justices of the district in which he resides, in general quarter sessions assembled, and such justices shall inquire into the character of the party, and if expedient to increase the number of inns, the presiding magistrate shall grant a certificate. § 6. At the time of granting such certificates, the justices shall frame rules and regulations for inn-keep-

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ers, which they shall be bound in recognizance to abide by, and a copy of such rules and regulations, for the information of travellers, shall be fixed in some conspicuous place in every house so licensed. This act was to continue in force *two* years, and to the end of the next session; and was revived for *two* years longer by the 11 G. 4, c. 9, with the exception of that part of the second clause which relates to the adjournment of the sessions to the last Monday in December, and the third clause; and so much of the fourth clause as relates to the license duty. § 2. Every person keeping a shop and tavern, and taking a license for that purpose, shall pay a shop-keeper's license. § 3. Sessions may be adjourned to the fifth January, or if on a Sunday, the Monday following, for the purpose of receiving applications and granting approvals for licenses. § 4. Inn-keepers to pay for their license not more than £10, nor less than £2 16s. By 2 G. 4, c. 8, inn-keepers may sell wines, &c. by retail, to be consumed out of their houses. By 3 W. 4, c. 14, the 11 G. 4, c. 9, is revived, and continued for four years, and to the end of the next session.

Notice to Inn-keepers,—General Licensing Day.

Notice is hereby given, that an adjourned session of the peace will be held at the office of the clerk of the peace, in the city of Toronto, on the fifth day of January next, at the hour of o'clock in the forenoon, for the purpose of granting and renewing inn-keepers licenses, throughout the home district, for the year ensuing.

S. W.

Clerk of the peace for the H. D.

Toronto, 20th Dec. 183—.

Petition for a License.

To the worshipful the justices of the Home District, in quarter sessions assembled.

The humble petition of the undersigned A. B. sheweth :—

That your petitioner is possessed of a very commodious house, situate at in the said district, and is residing

therein, and the same is well adapted for the accommodation of travellers, and in a neighbourhood where an inn is much wanted: That your petitioner is desirous of obtaining a license to keep an inn there, and has made every preparation for the comfort and accommodation of travellers, and having obtained the requisite certificate of good character, which is hereunto annexed, your petitioner humbly prays, that your worships will be pleased to grant him a license to keep an inn at the aforesaid premises, upon the usual terms—And your petitioner will ever pray.

A. B.

Certificate of Good Character.

We the undersigned inhabitants of the township of in the home district, do hereby certify, that we have known Mr. A. B. for a considerable time past, and that he has always conducted himself in an upright, sober and respectful manner to all persons, and we believe him to be a fit and proper person to be entrusted with a license to keep an inn, which we further certify is much required in the neighbourhood where the petitioner resides. In witness whereof we have hereunto set our hands this day of

C. D.

G. H.

E. F.

I. J.

Form of the Chairman's Certificate.

Home District, } I, esquire, chairman of the
to wit: } court of general quarter sessions of the
peace, do hereby certify, that A. B. is recommended by the
justices in sessions as a proper person to keep an inn, in the
house in which he now resides, in the township of
for the year ensuing, on his paying the sum of for
the same, and entering into recognizance to keep good order
in his said house. Given under my hand and seal, at
Toronto, this day of January, 183—

To

J. P.

Inspector of Licenses for the H. D.

Chairman

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Form of Recognizance to be entered into.

Home District, } A. B.....£10.
to wit : } C. D..... 5.
 } E. F..... 5.

We, A. B. of the township of — inn-keeper, C. D. of the same township, yeoman, and E. F. of the same township, yeoman, do severally acknowledge to owe to our sovereign lord the king, that is to say, the said A. B. the sum of ten pounds, and the said C. D. and E. F. the sum of five pounds each, of sterling money of Great Britain, to be levied of our respective goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if the said A. B. shall make default in the recognizance hereunder written.

The condition of this recognizance is such, that if the above bounden A. B. having received a license to keep a common inn and ale-house and to sell wines and spirituous liquors, for one year from the fifth day of January, 18— thousand eight hundred and thirty — in the house wherein he now dwelleth, in the township of — do keep good order and rule within his said house, and in any out-house, yard, or garden, or other place thereunto belonging; and further, do abide by such rules and regulations as the justices of the peace for the said district may frame, for the observance of the several inn-keepers within the said district, pursuant to the authority in them vested, in and by the several acts of the provincial legislature now in force, for granting licenses to inn-keepers during the said term, then this recognizance to be void.

Taken and acknowledged before me, }
this — day of — 183—. }
S. W.

Clerk of the peace.

Office of the Clerk of the Peace,
Toronto, — 183—.

I hereby certify, that — has entered into recognizance before me, to keep good order in his house, as an

inn-keeper in the town — of — for the ensuing year.

S. W.

Clerk of the Peace H. D.

To —

Inspector of licenses, H. D.

Form of an Inn-Keeper's License.

— District.

Province of } Sir John Colborne, K. C. B. Lieute-
Upper Canada. } nant Governor of the province of Upper
Canada, &c. &c.

To all whom these presents may concern :—

This license is granted to — of the town — of — in the county of — and in the — district, inn-keeper, to keep the house known by the sign of — within the said town — as an inn, or house of public entertainment, and to sell therein by retail, wine, brandy, rum or other spirituous liquors :—this license to be in force until the fifth day of January, one thousand eight hundred and thirty — and no longer, and provided that the said — shall, during the continuance of the said license, maintain and keep good order in the said inn or house, and duly observe all such rules, regulations, matters and things, respecting inns or other houses of public entertainment, as by any act or acts made, or to be made, by the parliament of this province, are or shall be enacted and declared. Given under my hand, at Toronto, in the county of York, this — day of — one thousand eight hundred and thirty — in the — year of his Majesty's reign.

By his Excellency's command.

A. B.

Inspector General.

Received from the said — the sum of — lawful money of the province, being the duties payable on the same.

Assignment of an Inn-Keeper's License by Indorsement.

I, the within named — do hereby assign all my interest in the within license, and all benefit and advantage

accruing or to accrue, under or by virtue thereof, unto — his executors, administrators and assigns, for all the remainder now to come of my term and interest, therein subject, nevertheless, to such terms and conditions as are mentioned and expressed in the said license. Witness my hand, at — the — day of — 183—.

ALE-HOUSES.

By the 4 G. 4. c. 15. § 1. every person who shall open a house for the sale of beer, ale, cider or other liquors, not spirituous, within any town or village of this province, or within one mile thereof, containing twenty houses or more by retail, shall take out a license, under the hand and seal of any two justices of the peace residing within such town or village; or if two justices shall not be residing within such town or village, then by any two justices nearest thereto, and which license shall be in the form following :

Form of License.

“We, A. B. and C. D. two of His Majesty’s justices of the peace residing in [or nearest to, as the case may be] the town or village of do hereby authorise and empower E. F. in the house described by the sign of in said town or village, in the district, to keep a common ale and victualling house, and to utter and sell therein by retail, ale, beer, cider and other liquors, not spirituous, also, bread and other provisions; provided, that no unlawful game or games, or any drunkenness or other disorder be suffered in said house, or in the yard, garden, or premises thereunto belonging, but that good order and rule be maintained therein. This license to continue from the date hereof until the day of in the year of our Lord

For which license two shillings and six pence may be demanded, and no more.

§ 2. The justices before granting such licenses, shall take bond and surety by recognizance, from such ale-house

keeper in £10, and two sureties in £5, or one sufficient surety in £10, as well against the using of unlawful games, as also for the maintenance of good order and rule; to be filed by the justices with the clerk of the peace, at or before the next general quarter sessions, and such recognizance to be in the form following; and fee for the same, one shilling.

Form of Recognizance.

— District, } Be it remembered, that on the — day
to wit. } of — in the — year of the
reign of our Sovereign Lord — A.A. of — in the
said district, yeoman, and B. B. of — yeoman, and
C. C. of — yeoman, personally came before us D.
D. and E. E. justices of the peace for the said district,
and acknowledged themselves to owe to our sovereign Lord
the King, that is to say, the said A. A. the sum of ten
pounds, and the said B. B. and C. C. in the sum of five
pounds each, of good and lawful money of Upper Canada,
to be made and levied of their goods and chattels, lands
and tenements respectively, to the use of our sovereign
Lord the King, his heirs and successors, if the said A.
A. shall make default in the condition hereunder written.
Whereas the above bounden A. A. is licensed to keep a
house for the sale of ale, beer, cider and other liquors,
not spirituous, by retail, for one year from the date hereof,
in the house wherein he now dwelleth, known by the sign
of — in —. Now the condition of this recogni-
zance is such, that if the said A. A. shall suffer no unlaw-
ful games, drunkenness, or any other disorder, to be used
or committed in his said house, nor in any out-house,
yard, garden, or other the appurtenances thereto belong-
ing, but shall maintain and keep good order and rule within
the same, then this recognizance to be void, otherwise
to remain in full force and virtue.

§ 3. Every person to whom such license shall be grant-
ed, shall pay a duty for the same, as follows, viz. :—in
or within one mile of towns or villages containing not less
than twenty, nor more than fifty dwelling-houses, 10s. ;
from fifty to one hundred, the sum of 20s. ; and more than

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one hundred, the sum of 40s. ; which monies shall be paid to the magistrates issuing the license, and by them, within six months afterwards, to the receiver general, for the use of the province.

§ 4. Any person opening an ale-house, &c. contrary to this act, shall upon conviction before any two justices, upon the oath of one or more witnesses, or upon confession, forfeit and pay not less than £2. nor more than £5. to be levied by distress and sale of the goods of the offender, by warrant from the magistrates before whom such conviction shall happen, with costs ; and for want of sufficient distress be committed, by order of such magistrates, to the common goal of the district, for not less than ten days, nor more than thirty days.

§ 5. One half of the penalties shall be paid to the receiver general, for the use of the province, and the other moiety to the informer.

§ 6. Any justice on complaint or information against any person licensed as aforesaid, whereby in the judgment of such magistrate the recognizance shall be forfeited, may summon such person to appear at the next general quarter sessions to answer to such complaint, and shall bind the complainant in recognizance to appear and give evidence, at which said session a jury shall be empannelled to enquire of the complaint preferred, and if such jury shall, upon hearing the evidence, determine that the defendant has done any act whereby the condition of his recognizance is broken, such act being named by them, the justices before whom the matter shall be tried, shall order the recognizance of such defendant to be established in His Majesty's court of king's bench, and such person shall be disabled from obtaining a license for the sale of beer &c. for the space of one year then next.

§ 7. During fairs, persons may sell ale &c. but not spirituous liquors, without a license.

§ 8. The magistrate to whom application is made for licenses, may determine the number of houses which shall be licensed, and if any person upon being refused shall feel aggrieved, such person may apply to the general quarter sessions for redress ; and if the majority shall be of

opinion that the applicant is entitled to a license, the chairman may grant such license.

§ 9 Act to continue in force two years, and to the end of the next session,—continued by the 7 G. 4. c. 11. and by the 2 W. 4. c. 21. passed 28th January, 1832, for four years, and to the end of the next session.

LINE FENCES & WATER COURSES.

An Act to regulate Line Fences and Water Courses, and to repeal so much of an Act passed in the thirty-third year of the reign of His late Majesty King George the third, entitled, "An Act to provide for the nomination and appointment of Parish and Town Officers within this Province," as relates to the office of Fence Viewers being discharged by Overseers of Highways and Roads.

(4 W. 4. c. 12.)

WHEREAS much difficulty and inconvenience are experienced and many disputes arise from the want of some provincial enactment, by which each party interested in the making or repairing any division or line fence, may be compelled to make or repair, or pay for making or repairing a fair and just proportion of such fence: *Be it therefore enacted, &c.* that it shall and may be lawful for the inhabitant householders of each and every township in this province, at their annual town meeting for the election of township officers, to choose from among the inhabitants of the said township, in the same manner as by law other township officers are chosen, not less than three or more than eighteen fit and discreet persons to serve the office of fence viewers, who shall perform the duties hereinafter prescribed to fence viewers, and who shall take the same oath of office, and in the same manner which persons chosen to other township offices are or may be by law required to do, and be liable to the same penalties for neglect or refusal to take said oath of office, to which persons

chosen to other township offices and neglecting or refusing to take the oath of office are or may be by law liable.

2. *And be it, &c.* That each of the parties occupying adjoining tracts of land shall keep up, make and repair, a fair and just proportion of the division or line fence between their several tracts of land; and that where there shall be a dispute between the parties, as to the commencement or extent of the said division or line fence which either party may claim or refuse to make or repair, it shall and may be lawful for either party to submit the same to the determination and award of three fence viewers, which fence viewers are hereby authorised and required, upon being duly notified by either party in such case, to attend at the time and place stated in such notice, and after being satisfied that the other party or parties in the case have been duly notified to appear at the time and place, to proceed to examine the premises; and such fence viewers, or any two of them, shall determine any and every dispute in the matter aforesaid, between the said parties; and the award and determination of such fence viewers or any two of them, on the matter aforesaid, shall be binding on the parties as far as concerns the making or repairing of such division or line fence, and from thenceforth the occupier or occupiers of the said tracts or parcels of land shall respectively make and repair, and keep in repair, that part of such division or line fence which shall have been assigned in such award or determination to the occupier or occupiers of such tract or parcel of land, which determination and award shall be made in writing, and signed by such fence viewers, or a majority of them, and filed in the town clerk's office, and a copy of the same made out and given to each of the parties; *provided always, nevertheless,* that when by reason of any material change of circumstances in respect to the improvement and occupation of adjacent lots or parcels of land, an award which has been made under this act shall cease in the opinion of either of the parties to be equitable between them, it shall be in the power of either to obtain another award of fence viewers, by the same mode of proceeding as is hereinbefore directed; and that if the fence viewers who shall have been

called upon to make such subsequent award, shall find no reason for making an alteration, the whole cost of such reference shall be borne by the party at whose instance it shall have been made.

3. *And be it, &c.* That if any person or persons who may be in the occupation of any tract or parcel of land shall neglect or refuse to make or repair (as the case may be) an equal or just proportion of the division or line fence between such tract or parcel of land and the adjoining tract or parcel of land, for a period of thirty days after being required, by a demand in writing, by the person or persons occupying such adjoining tract or parcel of land, or after the award of the fence viewers as aforesaid, to make or repair such equal or just proportion of the division or line fence; or if the party making such demand shall for such period neglect or refuse to make or repair an equal or just proportion of the division or line fence, it shall and may be lawful for either of the said parties, after first completing his own proportion of such fence, to make or repair in a substantial manner, and of good sound materials, the whole or any part of the said division or line fence which ought to have been by the other party made or repaired, and to recover in the manner hereinafter mentioned, of the person or persons who may have neglected or refused in manner aforesaid, to make or repair such proportion of the division or line fence, the just and full value of such proportion, not exceeding the sum of two shillings and six pence per rod, to be ascertained and determined in the manner hereinafter provided: *provided always*, that any fence coming within the meaning and intent of the resolution, resolving what shall be considered to be a lawful fence for that year, entered into by the inhabitant householders at their annual township meeting, shall be considered by all fence viewers to be a lawful fence; and when the householders as aforesaid shall neglect or refuse to decide by such resolution what shall be a lawful fence, then and in that case it shall be lawful for such fence viewers, when called upon, to exercise their own judgment, and decide what they consider to be a lawful fence.

4. *And be it, &c.* That it shall and may be lawful for any commissioner of the court of requests for the division in which such fence may be situated, and he is hereby required, upon the demand of any person or persons, to issue a summons under his hand and seal, directed to three fence viewers (by their proper names) of the township in which such fence is situated, requiring them to attend on the day and at the hour herein mentioned, and at a place therein mentioned, to view such fence, and to appraise the same; also, to issue his summons to the person or persons so having neglected or refused to make or repair such proportion of the division or line fence, who shall thenceforth be considered as the defendant or defendants in the case, requiring him or them to appear at the same time and place, to shew cause why the person or persons claiming payment as aforesaid, who shall thenceforth be considered as the plaintiff or plaintiffs in the case, should not recover the same.

5. *And be it, &c.* That such fence viewers, upon being personally served at least eight days previously with such summons, at the time and place therein mentioned, and after having duly examined the fence and received evidence, which, (if required by either party, or if the said fence viewers shall think it expedient,) shall be given under oath, they, or any two of them, shall determine whether the said plaintiff is entitled to recover any, and if any, what sum, from the said defendant or defendants under the provisions of this act; and in all cases where the commencement or extent of the part of such division or line fence which each party should make or repair, has not been determined by the award of fence viewers, as aforesaid, the said fence viewers, or any two of them, shall determine the same, which determination shall be final and binding on the occupiers of the said tracts or parcels of land, and have the same effect as if it had been made by three fence viewers in the manner aforesaid, and shall report their determination upon the matters aforesaid in writing, under their hands, to the said commissioner of the court of requests, by whom the said summons shall have been issued and shall also, in all cases where they

determine that the said plaintiff is entitled to recover any thing from the said defendant or defendants, state what distance of fence they have determined that the said defendant or defendants should have made or repaired.

6. *And be it, &c.* That the said fence viewers, if they shall be required by either party, before they shall have made a report as aforesaid of their determination to the said commissioner of the court of requests, shall give to such party requiring the same, a true copy of their said determination.

7. *And be it, &c.* That if either of the said parties shall desire to procure the attendance of any person to give evidence before such fence viewers, it shall and may be lawful for the commissioner of the court of requests, by whom any summons shall have been issued as aforesaid to such fence viewers, to issue, upon the application of either of the said parties, a summons to any person, to attend as a witness before the said fence viewers, at the time and place mentioned in the said summons to the fence viewers, and that the said fence viewers, when met as aforesaid, at the time and place mentioned in the summons, shall be and are hereby authorised, whenever it shall be desired by either party, or they shall think it proper, to administer an oath to any person, except the parties or persons interested, whose evidence they shall wish to take, which oath shall be in the following form :

“ You do solemnly swear, that you will true answer make to such questions as may be asked of you by either of the fence viewers now here assembled, touching the matters which they are now to examine and determine. So help you God.”

And if any person giving evidence as aforesaid under oath, shall be guilty of false swearing, he shall be deemed guilty of perjury, and upon conviction thereof, shall be liable to the same punishment and disabilities that persons convicted of perjury in other cases are now by law liable.

8. *And be it, &c.* That the commissioner of the court of requests, to whom the determination of the fence viewers shall be returned as aforesaid, shall cause the same to be copied into a book kept for that purpose by the court

of requests for the division to which he belongs ; and thereupon the said court of requests shall issue an execution against the goods and chattels of the said defendant or defendants, in the same manner as if the party to whom it is due had received a judgment in the court of requests for the sum which the said fence viewers shall have determined as aforesaid he was entitled to receive ; and also (if the said sum amounts to more than two pounds, but not otherwise) for the costs he may have necessarily incurred in the recovery thereof, and when such sum shall not amount as aforesaid to more than two pounds, then the other party shall be entitled to an execution from said court of requests against the goods and chattels of the plaintiff or plaintiffs, for the costs he may necessarily have been put to in opposing the plaintiff's claim, the amount of the said costs in either case to be determined by the said court of requests : *provided*, that when the said sum shall amount to more than two shillings and six pence per rod for the length of fence which such fence viewers shall have determined such defendant or defendants ought to have made or repaired, the said plaintiff shall be entitled to recover and have execution for only the sum of two shillings and six pence per rod, as aforesaid, and his costs : *provided also*, that no such writ of execution shall be issued until after the expiration of forty days from the time of such determination.

9. *And be it, &c.* That all and every of such fence viewers shall be entitled to receive the sum of five shillings for every day they are necessarily engaged in discharging the duties imposed upon them by this act, and so in proportion for any time less than one day, and no more ; and that every witness who shall be summoned, and attend as aforesaid before such fence viewers, shall be entitled to receive two shillings and six pence per day ; and every commissioner of the court of requests, and bailiff, shall be entitled to receive, for any service performed under this act, the same fees which they are respectively entitled to receive for similar services in the court of requests.

10. *And be it, &c.* That any fence viewers, legally holding the office of fence viewers, who shall neglect or refuse

to perform the duties of his office, shall forfeit for every neglect, to any person who may sue for the same, a sum not exceeding forty shillings, with costs of suit, to be recovered upon information and complaint before any one of the justices of the peace for the district in which such fence viewer was chosen, and to be levied by distress under a warrant issued by such justice.

11. *And be it, &c.* That when any party shall cease to improve his land, or shall lay his enclosure before under improvement in common, he shall not have a right to take away any part of the partition fence that to him belongs, adjoining to the next enclosure that is improved or occupied: *provided* the party occupying the lands adjoining the same will allow and pay therefor so much as the fence viewers, or a majority of them, shall, in writing, determine to be the reasonable value thereof; and whenever any lands which have laid unimproved and in common shall be afterwards enclosed or improved, the occupier or occupiers thereof shall pay for their fair or just proportion of the division or line fence standing upon the divisional line between the same land and the land of the enclosure of any other occupant or proprietor; the value thereof to be ascertained and set forth in writing by three fence viewers, in case the parties shall not agree among themselves, and the amount of said value to be recovered according to the proportions so estimated, in the same manner and form as hereinbefore provided respecting the making and keeping in repair division or line fences.

12. *And be it, &c.* That in no case shall any person be authorised to take away any part of the partition fence that to him belongs, adjoining to the next enclosure that is improved or occupied, unless the party occupying the lands adjoining the same refuse to pay for the same as aforesaid, nor without first giving due notice to such party for at least twelve months previously to the removal of the same.

13. *And be it, &c.* That when a water fence, or a fence running into the water, is necessary to be made, the same shall be done in equal parts, unless by the parties otherwise agreed; and in case either party shall refuse or neglect to make or maintain the share to such party belonging, similar

proceedings shall or may be had as in other cases of the like kind respecting fences out of the water, in this act mentioned.

14. *And be it, &c.* That when lands belonging to or occupied by different persons, and subject to be fenced and bounded upon, or divided from each other by any brook, pond or creek, which of itself is not a sufficient fence, in such case, if the parties disagree, the same may be submitted to three fence viewers, as heretofore provided in cases of disagreement; and if, in the opinion of such fence viewers, such brook, river, pond or creek, is not of itself a sufficient fence, and that it is impracticable to fence at the true boundary line, they shall judge and determine how or on which side thereof the fence shall be set up and maintained, or whether partly on one side and partly on the other side, as to them shall appear just, and reduce such their determination to writing, as heretofore provided in other cases; and if either of the parties shall refuse or neglect to make up and maintain the part of the fence to such party belonging, according to the fence viewers determination in writing as aforesaid, the same may be done and performed as is in this act before provided in other cases, and the delinquent party shall be subject to the same costs and charges, and to be recovered in like manner.

15. *And be it, &c.* That in all cases where any party shall desire to have a lane between his land and any adjoining tract or parcel of land, and shall make the fence on one side of the said lane on his own land, he shall not be obliged to make or repair, or pay for making or repairing any part of the fence on the other side of such lane, any thing herein contained to the contrary in any wise notwithstanding.

16. *And wherets,* it is expedient to provide for the opening of water courses in this province: *Be it therefore &c.* that in all cases when it shall be the joint interest of parties resident within this province, to open a ditch or water course for the purpose of letting off surplus water from swamps or sunken miry lands, in order to enable the owners or occupiers of such swampy or sunken land to cul-

tivate or improve the same, it shall be the duty of such several parties to open a just and fair share of such ditch or water course, in proportion to the several interests that such parties may have in the same; and in cases where a dispute shall or may arise as to the part, width depth or extent, that any party so interested ought to open or make, the same may be referred to three fence viewers, in the same way and manner as is heretofore by this act provided in cases of disputes between parties relative to line or division fences; and it shall be the duty of such fence viewers, to whom such matters shall be referred, to divide or apportion such ditch or water course among the several parties, as in the opinion of such fence viewers, shall be a just and equitable proportion, having due regard to the interest each of the parties shall have in the opening of such ditch or water course; and the fence viewers shall at the same time decide what length of time shall be allowed to each of the parties to open his or her share of such ditch, and the determination or award of such fence viewers shall be made in the same form, and signed and executed in the same manner, and have the same effect in regard to ditches or water courses as is provided by this act in regard to line or division fences.

17. *And be it, &c.* That when it shall appear to such fence viewers that the owner or occupier of any tract or parcel of land is not sufficiently interested in the opening of such ditch to make him a party, and at the same time that it is necessary that such ditch should be continued across his land by the other party or parties, at their own expense, they may award the same in manner and form aforesaid, and upon such award, such party or parties may lawfully, and without molestation, open such ditch or water course across such land as aforesaid, at their own expense.

18. *And be it, &c.* That if any party shall neglect or refuse to open, or make and keep open his share or proportion allotted or awarded to him by such fence viewers as aforesaid, within the time allowed by such fence viewers, either of the other parties may, after first completing his own share or proportion allotted to him in manner aforesaid, open the share or proportion allotted to such party

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neglecting or refusing to open the same, and such party so opening such other parties share shall be entitled to recover the value thereof from the party so neglecting or refusing to open his share or proportion, in the same way and manner and form as is in this act provided, relative to line and division fences.

19. *And be it, &c.* That all fines levied under the provisions of this act shall be by the justice or justices of the peace by whom the same may be imposed and collected, paid over to the overseer or overseers of highways, in the division wherein such fine or fines shall have been levied; and such overseer or overseers are hereby authorised and required to expend the same in the same manner as other monies coming to their hands to be expended on the highways, and shall render an account thereof within three months after the expenditure thereof, to the justices in quarter sessions assembled.

20. *And be it, &c.* That this act shall be and continue in force for four years, and from thence to the end of the next ensuing session of parliament, and no longer.

21. *And be it, &c.* That so much of the fifth clause of an act of the parliament of this province, passed in the thirty-third year of the reign of King George the third, entitled, "an act to provide for the nomination and appointment of parish and town officers within this province," as provides that persons chosen to be overseers of highways and roads, shall also serve the office of fence viewers, shall be and the same is hereby repealed; and that whatever duties that were before the passing of this act directed to be performed by such overseers of highways and roads, in relation to fences, shall hereafter be performed by the persons chosen to be fence viewers, under the authority of this act.

LANDLORD & TENANT.

Leases.

A LEASE is a contract for the possession and profits of lands and tenements on the one side, and a recompense of rent or other income on the other; or it is a conveyance of lands and tenements to a person for life, or years, or at will, in consideration of a return of rent or other recompense. The party letting the land is called the *lessor* or landlord, and the party to whom the lease is made, the *lessee* or tenant. *Woodfall, L. & T. p. 1.*

And by the *common law*, all those persons who are capable of alienating their property or of entering into contracts respecting it, may make leases which will endure as long as their interest in the thing leased, but no longer.—*Cruik. Dig. Leases.*

By statute 32 Henry VIII. c. 28, a tenant in tail may make leases to enure for 21 years, or three lives, to bind his issue in tail, but not those in remainder or reversion.

Husbands seised in right of their wives may make leases for the same period, provided the wife join in them, and seal and deliver the same in person.

Generally speaking, a lease should be in writing, and signed and sealed by all the parties interested; but by the 29 Car. II. c. 3. a lease by "parol" or word of mouth for three years will be good, provided that the rent reserved thereon amounts to *two-thirds* of the improved value. All Leases exceeding that term must be put into writing and signed by the parties or an authorised agent, or the same will be void.

A Lease cannot be made to a married woman.—*Cro. Jac. 172.*

And by sta. 32. H. 8. c. 16. § 13. all Leases of any dwelling-house or shop within the King's dominions made to any stranger, artificer, or handicraftsman born out of the King's liegance, not being a denizen, are void, and each party is liable to forfeit £100—one moiety to the King and the other to the informer. And this statute may be pleaded in bar to an action of debt for rent—1 *Saund. 8. n. 2.*

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If such alien, however, occupy a dwelling house or shop under an *agreement* which does not amount to a lease, as if he be tenant from year to year, or for a shorter time, an action for use and occupation will lie against him notwithstanding.—*Ib.*

And although an alien cannot purchase a lease for years of lands, yet he may, if he be a *merchant*, take a lease of a house for his habitation for years only: and this is for the encouragement of trade; But if he depart the kingdom or die, it goes to the king, not to his executors or administrators. *Poph. 36. Co. Sitt. 2. b.*

The usual words whereby a lease is made, are, "demise, grant, and to farm let," and whatsoever words amount to a grant, may serve to make a lease. *Co. Sitt. 45.* So a license to inhabit amounts to a lease. *4 Burr. 2209.*

The words, "covenant, grant, and agree," that A. shall have the lands for so many years, will constitute a lease. *Cro. Jac. 91.*

And it is settled that words in an agreement, "that A. shall hold and enjoy &c." if not accompanied by restraining words, operate as words of present demise. *5. T. R. 163.*

So, where one agreed to let, and also upon demand to execute a lease, to contain the usual covenants, and it was stipulated that such agreement should be binding until the lease should be executed:—it was held to be a present demise. *15 East R. 244.*

But when the article was, "that he is content A. shall have a lease for six years; that the rent shall be £10."—this was held not to be a lease, but instructions only for a lease.

So, "I agree to let my land,"—this is no lease. *Cro. Eliz. 156.*

No lease can be valid, unless both the lessor and lessee be competent to make a contract. Married women, and others incapacitated by law from entering into a contract on other matters, are of course disqualified for making a lease; unless in the case of married women the husband join in the lease.

The lessor must have sufficient interest in the premises to enable him to give a good title to the lessee; and the

lease must necessarily be granted for a shorter term than the lessor possesses in the premises. If granted for the entire term, it would come under the denomination of an *assignment*.

A lease may be dated as far *back* as the parties please ; but it should not be dated *forward*. It must be in writing, as before mentioned, if for a longer period than three years, and should be read by the parties, or to them, if required, signed and sealed by them, or by their agents duly authorised, and delivered, either by the lessor, or his duly authorised attorney, in the presence of one or two witnesses, who should subscribe their names. The law does not prescribe any particular number of witnesses, nor in point of fact is any witness at all absolutely necessary to the validity of a lease. It is, however, so customary, that to avoid any question which might be raised by the omission, it is generally regarded as an essential form.

In the case of *Steel, v. Mant*, it has been decided that a lease takes effect from the day of its delivery, and not from its date.

A lease granted to one person for a certain term, without any restriction as to assignment, may be assigned over by that person to another, either for the *whole* or *part* of that term. The former is properly an *assignment*, and the latter an *under-lease*.

If a man take the entire lease off another man's hands by *assignment*, he is bound to observe all the covenants in the original lease ; *Bull, N. P.* 159 ; but if he take as *under-lessee*, he is tenant only to the lessor under whom he holds, and has nothing to do with the terms of the original lease, further than that, if the lessor under whom he takes, neglect their observance, his peaceable possession may be affected by the consequent proceedings of the original landlord.

Even though there may be a covenant in a lease that the lessee shall not have power "to assign," such covenant will not operate so as to preclude him from granting an under-lease for part of the term. *H. Blackstone's Rep.* 766.

Neither can the devise of a term by will be interpreted as a breach of a covenant "not to assign."—*Style* 44.

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The covenants usually contained in a lease are, on the part of the landlord, that his lessee shall have peaceable possession of the premises ; and on the part of the tenant, that he will pay rent and taxes, perform necessary repairs, effect proper insurance, and carry on no trade that is offensive ; with a proviso that the landlord shall have power to re-enter and take possession of the premises, in case of non-performance of any of the covenants actually entered into, which of course depend entirely upon the mutual understanding of the parties.

A covenant to pay taxes generally includes parliamentary taxes. *Dougl.* 614, 615 ; and if a tenant covenant to pay "all taxes," this binds him to the payment of such taxes only as were in being when the lease was made, but not taxes or charges afterwards imposed. *1 vent.* 223.

If the lease contain no provision at all respecting the taxes, the tenant will not be liable to pay those which are legally chargeable on the landlord.

A person taking a house on a repairing lease, should well consider the consequences of so doing ; since, if he undertake to keep the house in repair during the term of his lease, and to leave it on his quitting in as good condition as when he entered it, and any accident should happen, such as its being burnt by fire or lightning, blown down by tempest, or otherwise destroyed or damaged, he will be compelled to rebuild or repair it, at whatever expense, so as to render it to the landlord in the precise state in which he found it. *2 Com. Rep.* 650. *Woodfall* 257.

If the tenant, therefore, wishes to avoid taking upon himself the risk of so heavy a responsibility, care should be taken to insert in the covenant for repairs, an exception "in case of accidental fire, tempest, or other inevitable accident."

A lessee who covenants to pay rent, and to perform all repairs, except such as may be rendered necessary from casualties by fire, should also expressly stipulate that, in the event of such casualty happening, rent shall cease until the premises be repaired or rebuilt by the landlord ; otherwise should the premises happen to be burnt down, the tenant will still be liable under the covenant for payment of rent. *Belfour v. Weston*, *1 Term Reports*, 310.

When there is a general covenant to repair on the part of the lessee, if he pull down any buildings, no action will lie against him till the end of the term, for before that period he may repair them. *F. N. B.* 145. *K. Woodfall* 258.

Leases, however, usually contain a reservation of entry for the landlord to enter and view repairs; and a covenant by the tenant to repair, after notice from his landlord within a specified time, usually three months; in default of which an action will lie. *2 Camp.* 520.

Should a lease be lost or mislaid, the lessee's interest in the term for which it was demised to him will not be affected, provided he can prove the term to be unexpired.

Even though a lease stipulate that if the rent be unpaid at the day appointed, the lease shall be void; yet, though the rent be claimed on the given day, and not paid, the lease will not be forfeited unless entry be made, and the precise rent be demanded on the proper day. No *actual* entry is necessary to be made; but it is sufficient to bring an ejectment only. *1 Saunders* 287, *n.* 16; and even after ejectment brought, proceedings will be stayed at any time after judgment, and before execution, on the tenant bringing into court all the rent in arrear and costs. *4 G. 2, c.* 28. But the court will not stay proceedings if a writ of possession has been executed.

If the landlord give previous notice, he may enter the premises of his tenant, from time to time, during his term, to view the state of the repairs; and this, although it be not expressly agreed that he shall have such power; but if he enter forcibly, he will be deemed a trespasser.

In taking an under-lease of a house, a person should carefully examine the covenants in the lease and under-lease, or he may probably discover, when too late, that he is tied down by restrictions which may involve him in such difficulties as to make his house a source of perpetual annoyance to him. He should also fully satisfy himself that all arrears of rent, of the original lease have been paid up to the time of his taking possession. If any of these payments should be in arrear he will be liable to sa-

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tisfy the whole of them; and his only remedy to recover them would be by proceeding against the last tenant.

If a lessee do not deliver up possession to the lessor at the expiration of the lease, he is of course liable to rent; and if he be allowed to retain possession without any new contract, he is deemed a tenant at sufferance, at the same rent as he had been previously paying; and on the landlord's acceptance of any sum for rent accrued due after the determination of the lease, the tenant may hold the premises from year to year, till half a year's notice shall have been given him.

For the more speedy recovery of premises by the landlord, where the lease has run out and the tenant holds over a remedy, has been recently provided by provincial statute, passed in the 4 W. 4, c. 1, under which the landlord may obtain from the court of king's bench a writ of possession without the delay and trouble of bringing an action of ejectment.

Whatever is fixed to the soil, out-house, or building, so as to become a part thereof, is considered as being annexed to the freehold, and cannot be removed by a lessee, but will, at the expiration of the lease, become the property of the lessor.

With respect however, to what shall be deemed fixtures of such a nature, or under such circumstances as that they can or cannot be removed by an outgoing tenant, or taken by his executor, or by the heir, the law is much less strict at this day than it used to be. The old and general rule of law was, that whatever was fixed to the freehold became part of it, and could not be taken away. But of late years there have been exceptions to this rule. The first is between landlord and tenant, the latter of whom may now take away *during the term* all chimney pieces, and even wainscot, put up by himself; and all such things necessary for trade, as brewing utensils, furnaces, coppers, fire engines, cider mills, &c, as he himself has put up or erected.—*Woodfall*, 318. 1 *Atk.* 477. 8. If the landlord, therefore, be desirous to prevent the removal of any such fixtures by the tenant, it should be so stipulated in the lease.

A covenant by the tenant to yield up in repair at the ex-

piration of the lease all buildings which should be erected during the term upon the demised premises, includes buildings erected and used by the tenant for the purpose of trade and manufacture, if such buildings be let into the soil, or otherwise fixed to the freehold; but not when they merely rest upon *blocks* or *pattens*. 1 *Taunt.* 19. *Woodfall*, 220.

Hangings, pier-glasses, &c. though forming part of the wainscot, and fixed with nails or screws to the freehold, are not to be taken as part of the freehold, but are removable by the lessee of the house. So marble chimney-pieces may be removed by the tenant. 1 *Atk.* 447. *Woodfall* 220. It is, however, to be understood, that the tenant is to make good any damage that may arise from putting up or removing fixtures; and he is bound to leave the premises in this respect without any detriment to the landlord.

When, however, the premises descend upon the heir at law, an executor cannot claim the right of removing fixtures, but they will descend with the freehold to the heir. 1 *Atk.* 477.

Although exceptions have been thus made for the benefit of trade, with respect to the removal of fixtures, the rule does not seem to extend to *agriculture*.

Thus a tenant, in agriculture, who erected at his own expense, and for the more necessary and convenient occupation of his farm, a beast-house, carpenter's shop, fuel-house, cart house, and fold-yard wall, (which buildings were of brick and mortar, and tiled, and let into the ground) was not permitted to remove the same, though during his term, and although by so doing he would have left the premises in the same state as when he entered. *Elwes v. Maw*, *M.* 42, *Geo.* 3.

In purchasing a lease of a *tenant*, care should be taken, by examining the lease and inventory, that fixtures and other things belonging to the premises are not paid for as belonging to the tenant.

Forfeiture of the Lease.

A forfeiture of the lease may be incurred, 1. by the tenant committing any act whereby he denies or impugns the title of his landlord—such as acknowledging the fee to

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be in a stranger and claiming under another. 2. By breach of express conditions contained in the lease : thus, if the lease contain a condition that if the rent be in arrear, or if the tenant assign or underlet without the lessors consent, or carry on any noxious or offensive trade injurious to the premises or the neighbourhood, or if the tenant suffer the premises to go to decay, or make any material alterations, and the like, that the landlord shall have power to re-enter ; in any of these cases the lessor will have a right to re-enter and eject the tenant ; but if the forfeiture accrue for non-payment of rent only, and the landlord bring an action of ejectment, the court of kings bench, as we have before observed, will stay the proceedings at any time before execution, on the trial bringing into court all the rent in arrear and costs ; 4. G. 2. c. 28 : but not if a writ of possession have been actually issued and executed.

And again, if, after the breach of any other condition, the landlord do any act that amounts to a waiver of his right to re-enter, as, by acceptance of rent after the forfeiture incurred ; or, by bringing an action to recover the same, or by distraining for such subsequent rent : this will amount to a waiver on the part of the lessor. But the forfeiture must be known to the lessor, at the time, in order to render his acceptance of rent, or any other act a waiver of the forfeiture. *Cro.Car.* 234. *Woodfall* 151.

Assignments.

An assignment, in law, differs from a lease in this—that by a lease a man grants an interest less than his own ; in assignment, he grants the whole property. 2 *Black.* 326.

In what is properly called an assignment, therefore, the assignee, has the whole term of the assigner made over to him, and all that the assigner had previously covenanted, the assignee is bound to perform : but he is not accountable for the covenant broken by the assigner *before* the assignment. *Bull. N. P.* 159.

An assignment must, by the statute of Frauds, be in writing, and is usually made by the words “ grant, assign,

and set over"; but no particular form of words is necessary, so that the tenor be sufficiently clear to avoid the possibility of misconstruction. *Woodfall* 277.

If a lessee assign over his term, the lessor is not obliged to accept the assignee as his tenant, but may continue to resort to his lessee.

If, however, he receive rent of the assignee, knowing of the assignment, he has made his election, and shall not afterwards have an action of debt against the lessee, for rent due after the assignment; though it has been held that he may nevertheless maintain an action on the lessee's covenant, that being a personal engagement, which is not waived by the assignment. *Woodfall* 278. In leases, the lessor being a party to the original contract continues always liable notwithstanding any assignment. *Doug.* 460. And after assignment the landlord may sue either the lessee or assignee in an action of covenant for repairs. *Woodfall* 280. and this rule of law is founded upon reason; for when a landlord grants his lease he selects his tenant; he trusts to the skill and responsibility of that tenant; and it cannot be endured that he should be afterwards deprived of his action on the covenant to which he trusted, by an act to which he may not have had the power to object. *Woodfall* 282.

If the term made over in an assignment be but a single day less than the whole term, it will not amount to an assignment, but an under-lease of the whole term will amount to an assignment. 1 *Ld. Ray.* 89.

But if the lessor reserve the rent to himself on granting over, it is an under-lease and not an assignment, though he part with the whole term. 1 *Str.* 404.

No consideration is required to be expressed in an assignment; for the fact of the assignees being subject to the payment of the rent reserved in the lease, is held to be sufficient consideration. *Nay. Max.* 92.

If the assignment be defective as an assignment, it shall nevertheless, as against the party assigning, be good as an under-lease.

Tenancy by the year.

All demises, where no certain term is mentioned, are

held to be tenancies *from year to year*, which neither party can determine without half a year's notice. 2 *Blackstone's Comm.* 145.

If, therefore, a man once take possession of a house, he is bound to retain it for a twelve-month; and even though he may give it up, and let it to another tenant before that time, the landlord, unless he accept the other tenant, may still look to him for the rent. If, however, the landlord should receive rent of the other tenant, he will be deemed to have accepted of him, as having made his election.

Notice to quit.

Every tenant of premises from year to year, or where no certain time is specified, is bound to give his landlord *half a year's notice*; and it is imperative that this notice be so given as to expire at the same period of the year as that on which he took possession. If, therefore, the tenancy commence on the first of May, and the tenant wish to leave at the expiration of the first year, the notice to quit must be served on or before the first of November, in order that he may leave on the first of May following. It will be obvious from this, that if a single day beyond the first of November be allowed to elapse without such notice being given, the tenant can be compelled to retain the house for the period of two years from the time of his first entering, should the landlord be disposed to exact the full notice he is by law entitled to.

It is most important that this point should be clearly understood by both landlord and tenant. In default of any specific and valid agreement to the contrary, half a year's notice is necessary on both sides, and such notice must be given, by either party, so that it shall expire at the same period as that on which the tenant commenced rent.

Notice to quit, however, is not necessary in every case. Thus when a lease is determinable on a certain event, or at a particular period, no notice to quit is necessary, because both parties are equally apprised of the determination of the term. 1 *T. R.* 54. 162.

If, therefore, I take a house for a twelve-month certain, no notice to quit is necessary. But if the house be taken for an uncertain period, at so much rent by the year, then the tenant becomes in law a yearly tenant, and six months notice is necessary.

When notice is given improperly on either side, as a quarter, where half a year is necessary, or up to a wrong time; if the tenant consent to the sufficiency of such notice at the time, he cannot afterwards avail himself of any objection to it; and it has also been held, that a notice to quit at *Michaelmas*, served personally on the tenant, who made no objection at the time, is *prima facie* evidence from whence a jury may find that the tenancy commenced at that period. 13 *East*. 405. So, where a tenant being applied to respecting the commencement of his holding, informs the party that it began on a certain day, and notice to quit on that day is given at a subsequent time, the tenant shall be bound by the information which he so gave and not be permitted to show that in fact it began at another period. 2 *Esp. R.* 635.

An agreement by which the tenant is "always to be subject to quit at three months notice," constitutes a tenancy which may be determined by three months notice to quit, expiring at the same time of the year it commenced, or at any corresponding period.

If the tenant, under such an agreement, enter in the middle of one of the usual quarters and there appears to be no agreement to the contrary, he will be presumed to hold from the day he enters, and the tenancy can only be determined by a notice expiring on that day of the year, or some other quarter-day calculated from thence.

When the time at which the tenancy commenced, was unknown to the plaintiff, and he gave the defendant notice to quit "at the end and expiration of the current year of his tenancy, which should expire next after the end of one half-year, from the date hereof," this notice was held to be sufficient. 2 *Esp. R.* 635.

A parol (or verbal) notice is sufficient under a verbal agreement; though in other cases it should be in writing. 1 *Bos. & Pul.* 465.

The law has also provided another remedy, besides that of ejectment, to compel a refractory tenant to quit after due notice in writing given by his landlord, viz. by stat. 4 Geo. 2, c. 28, which enacts, "That if any tenant for life or years, or other person who shall come into possession, by, from, or under him, shall wilfully hold over any lands, tenements, or hereditaments, after the determination of such term, and after demand made, and notice *in writing* given by the landlord for delivering up the possession thereof, he shall, for the time that he shall so hold over, pay double the *yearly value* thereof; to be recovered by *action of debt*, in any court of record."

Under this statute, it should be observed, that the double value is only recoverable by *action of debt*, and not by distress as in ordinary cases. The statute, however, does not extend to weekly tenants, nor in fact to any tenancy less than a year. 2 *Camp.* 453.

But by the 2 Geo. II. c. 19, it is enacted, "That in case any tenant shall give notice of his intention to quit the premises holden by him, and shall not deliver up possession according to such his own notice, then the tenant shall from thenceforward pay to the landlord, all the time he continues in possession, *double the rent* or sum which he would otherwise have paid; to be levied, sued for, and recovered *in the same manner as single rent*."

The above statute, it will be observed, is not confined in its operation to yearly tenants only. Every tenant whatsoever, whether by the week or year, will be liable to the consequences imposed by this statute for holding over, after notice to the landlord.

So that when a tenant gives notice, but does not quit at the expiration of such notice, the landlord may thenceforward, so long as he continues in possession, demand double rent of him, and recover the same *by distress*, or otherwise.

From the above quotations, it will be observed, that before the landlord can recover *double value*, he must give a notice in writing; but such written notice does not appear to be necessary from a tenant to a landlord. Hence it is held, that a landlord may recover *double rent* of his tenant by distress, if he continue to hold possession of premises

after the expiration of a parol notice given by him, and this the same as if such notice had been in writing. 1 *Bl. R.* 533. *s. c.*

But if after notice of double value shall have expired, a single rent be accepted, such acceptance will prevent the recovery of double value until notice be again given and expired. 6 *T. R.* 62. 6 *East.* 647.

If any tenant at rack-rent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who shall be in arrear, shall desert the premises and not leave sufficient distress, two justices of the peace may, at the request of the landlord, go upon and view the same, and affix on the most conspicuous part, notice in writing, what day they will return to take a second view, (which must be fourteen days afterwards, at the least;) and if the tenant do not then appear and pay the rent, or there shall not be sufficient distress on the premises, the justices may then put the landlord into possession. But the tenant may appeal to the next justice or justices of assize, who may award costs to either party.

If a landlord accept the last quarter's rent when there are arrears on a former quarter, he precludes himself from demanding the arrears; and it is said that no proof will afterwards be admitted to shew that they were unpaid.

Rent is demandable and payable at any time before sun-set on the day on which it is due, so that there be light enough for the landlord to count it by. It should be tendered before sun-set, that the landlord may have day-light enough to count it by; for he is not obliged to take it by candle-light.

A tender of rent must be in the current coin of the province; and a tender in bank notes would be insufficient, and distress must not be made after tender of payment; if made, such distress would be illegal. *Woodfall* 315.

It is not enough for the person who intends to make a tender, to say, "I am ready to pay the debt," &c.; but he must make an actual offer to pay, by producing the money; and this is always best done in the presence of a witness, who can afterwards bear testimony to the tender.

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If the tender be refused, such refusal may be pleaded in bar of any action for non-payment.

It has been held, that if the landlord covenant to repair during the term, and will not do it, the tenant may repair and pay himself; but *Holt C. J.* doubted this; and it is now settled that the tenant *cannot* legally deduct the amount of such repairs from the rent if objected to by the landlord, but must bring his *action*. *Bull N. P.* 178. But he might do so, if provided for in the lease.

Lodgings.

Lodgings may be let in the same manner as lands and other tenements, either by a written or verbal agreement; by the year, or for any less period which may be specified.

The law does not make any distinction between lodgers and others tenants, as to the payment of their rent, or the turning them out of possession; they being liable, in general, to the same regulations as other tenants, excepting as respects notice only, regarding which, as relates to lodgings taken for a less period than a year, it is not necessary that such notice should expire on the quarter-day whereon the tenancy commenced.

Notice depends either upon agreement made between the parties, or the particular circumstances of the case, as the length of time for which the lodgings are taken, &c. In general, if no particular notice is stipulated for, it is usually understood, that if the apartments shall have been taken by the week, a week's notice is considered sufficient; if by the month, a month's notice; if by the quarter, a quarter's notice; and it has been judicially decided that notice had reference in all cases to the letting, unless controlled by the express agreement of the parties, or the particular custom of the place. *Esp. R.* 94. *Woodfall* 178.

Where lodgings are taken for a *term certain* only, no notice whatever is necessary, the tenancy of course expiring simultaneously with the term.

A housekeeper has the same power to distrain the goods of his lodger for rent, as a landlord has over those of his tenant; and he may detain the property of his lodger,

whilst on the premises, till the rent be paid ; but not unless such rent be actually *due*, according to their agreement.

Furnished lodgings are usually let and paid for, by the week. A week's notice therefore, where such is the case, is deemed sufficient on either side.

By statute 3 and 4 William and Mary, c. 9. it is enacted that "if any person or persons shall take away, with intent to steal, embezzle, or purloin, any chattel, bedding, or furniture, which by contract or agreement, he or they are to use, or shall be let to him or them to use, in or with a furnished lodging, such taking, embezzling, or purloining, shall be adjudged larceny or felony." An offender, to come within the meaning of this Act, must be a lodger at the time the larceny was committed.—*Old Bailey Sessions*, 1785. And where a whole house is let ready furnished—and even it is said, where the party, by agreement, is to make good every thing which is missing or injured in a common lodging, for stealing the goods out of such a lodging-house, or even ordinary lodging, under the specific agreement above mentioned—an indictment will not lie under this statute.

Farm and Husbandry Leases.

The law of Landlord and Tenant is, generally, the same with respect to farms as other lands ; being regulated by the tenure under which they are holden, whether under lease, or from year to year.

In all husbandry leases a covenant is always *implied* (though not expressed) on the part of the tenant, that he will use the land demised to him in a husbandlike manner, and not unnecessarily exhaust the soil by neglectful or improper tillage ; for, in an action of waste, the bare relation of landlord and tenant is a sufficient consideration for the defendant's promise to manage a farm in a husbandlike manner.

Sometimes a special covenant is inserted as to the mode of cultivation ; for, without such a covenant, it is

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held that the lessee would be left to his own choice in the treatment of the land, provided he break not the implied covenant to treat it in a husbandlike manner.

Respecting a covenant "to use the land in a husbandlike manner, and to deliver it up in like condition," it was held to be a matter of law to determine what *was* "using the land in a husbandlike manner," and Mr. Justice Buller gave it as his opinion, that under such a covenant the tenant ought to use on the land all the manure made there, except that, when his time was out, he might carry away such corn and straw as had not been used there, and was not obliged to bring back the manure arising from it.

If a tenant cut down or destroy any fruit trees growing in the garden or orchard let to him, he will be liable to an action for waste; but not so if such trees grow upon any of the ground which the tenant holdeth out of the garden or orchard.

A farmer who raises young fruit trees on the land demised to him for the purpose of filling up his lessor's orchard, is not entitled to sell them; but the case is different if a nurseryman by trade does the same thing.

Cutting down of willows, beech, birch, ash, maple, or the like, standing in the defence and safeguard of the house, is unlawful; so, if there be a quickset fence, the tenant must not venture to stub it up, or suffer it to be destroyed: for these and similar devastations an action of waste may be brought.

An action of waste may also be incurred in respect of timber trees, either by cutting them down or topping them, or doing any act whereby the timber may decay; for timber is part of the inheritance.

The Law of Distress.

1. Distress for rent must be for rent in arrear; therefore, it may not be made on the same day on which the rent becomes due; for if the rent is paid in any part of that day, whilst a man can see to count money, the payment is good. 2. It must not be after tender of payment. 2 *Inst.* 107. 3. Persons having rent in arrear upon any

lease determined, may distrain for such arrears after the determination of the lease in the same manner as if it had not been determined; provided that such distress be made in six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrear became due. 8 *An. c.* 14, § 6, 7. Before the statute of the 17 C. 2, c. 7. in case a distress was too little, where sufficient distress was to be had, a man could not be distrained again, be the demand ever so great.—*Mo.* 7. *Com.* 546. But now, by said statute, in all cases where the value of the cattle distrained shall not be found to be of the amount distrained for, the party to whom such arrears were due, his executors or administrators, may distrain again for the residue. § 4. So, in like manner, where the distress is made by virtue of the warrant of a justice of the peace, in nature of an execution; and the distinction appears to be this: where a person hath an entire duty, he shall not split the entire sum, and distrain for part of it at one time, and for part of it at another time; and so *toties quoties* for several times, for that is great oppression: but if a man seizeth for the *whole* sum that is due to him, and only *mistakes* the value of the goods seized, there is no reason why he should not afterwards complete his execution, by making a further seizure. *Burrow, Mansfield*, 589. If any distress and sale shall be made for rent said to be in arrear and due, when none is in truth due, the owner shall recover double value, with full costs. 2 *W. Sess.* 1 c. 5, § 5.

By the stat. 8 Anne, c. 14, it is enacted, that “no goods upon any tenement leased shall be taken by an execution unless the party at whose suit the execution is sued out, shall, before the removal of such goods, pay to the landlord of the premises, or his bailiff, all money due for rent on the premises, provided the arrears do not amount to more than *one year's rent*; and if the arrears shall exceed one year's rent, then the party paying to the landlord, or his bailiff, one year's rent, may proceed to execute his judgment; and the sheriff is required to levy, and pay to

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the plaintiff, as well the money paid for rent as the execution money."

If, therefore, previous to the landlord's putting in a distress for the rent, the goods of his tenant should be in the possession of the sheriff under an execution for debt, the landlord should not attempt to distrain, but must by stat. 8 Anne c.14, give a notice to the sheriff to the following effect:—

To A. B. Esq. Sheriff of the county of ———

TAKE NOTICE,—That the sum of £ ——— for rent, due at ——— last, is now due from C. D. the person to whom certain goods belong, of which you are now in possession by virtue of a writ of ———, returnable on ———; which sum I hereby give you notice to pay to me, before such goods be removed from the premises. As witness my hand this ——— day of ———

Witness,

G. H.

E. F. landlord of
the said premises.

If the above notice be not given, the sheriff will not be bound to retain the rent on the landlord's account; but if properly attended to, the sheriff is bound either to pay the landlord his rent, or to vacate the premises, which is generally decided by the value of the property found thereon; it being to no purpose for the sheriff to keep his officer in possession, if there be not sufficient value to cover the landlord's demand.

No distress can be made until the rent be actually due, according to the terms on which tenements are let; and rent is not considered to be due until the last minute of the natural day on which it is payable. Hence a distress cannot be made until the day after that on which the rent becomes due.

A distress for rent cannot be made at unseasonable hours; but must be taken between the rising and setting of the sun, that is, after sun-rise and before sun-set. Neither can it be made on a Sunday.

A tenant may therefore lawfully move his goods any time before quarter-day, without being liable to a distress.—The goods in such case cannot be legally distrained afterwards, or, as it is technically termed, "followed." The

rent, when due, would be a debt on simple contract only, from the tenant to the landlord, to be recovered in a court of law; for although by stat. 11 Geo. 2, c. 10, it is enacted, that where goods are *fraudulently* or *clandestinely* removed off premises to prevent the landlord from distraining the same, it shall be lawful for such landlord, or any person by him lawfully empowered, within the space of thirty days after the conveying away or carrying off such goods, to seize the same, and sell and otherwise dispose of them, as if they had actually been distrained on the premises, unless they are, before that time, *bona fide*, and for a valuable consideration, sold by auction to a purchaser; yet, in the construction of this statute, it was decided in the court of common pleas, that in order to entitle the landlord to seize the goods after having been removed off the premises, the removal must have taken place *after the rent had become due*, and have been *secret*, and not open in the face of day; in which case the removal could not be said to be *clandestine*, within the meaning of the statute. It was further decided in the case of *Thornton v. Adams*, that the statute applies only to the goods of the *tenant* being clandestinely removed, and not those of a *stranger* or *lodger* in the tenant's house.

What Goods may be Distrained, and what not.

Distress for rent must be of a thing whereof a valuable property is in some body; and therefore dogs, bucks, does, coies, and the like, that are *feræ naturæ*, cannot be distrained. 1 *Inst.* 47. Although it be of valuable property, as a horse, yet, if when a man or woman is riding on him, or an axe in a man's hand, cutting of wood, and the like, they are for that time privileged, and cannot be distrained. 1 *Inst.* 47. And it hath been held, that the horses joined to a cart, with a man upon it, cannot be distrained for rent, but both cart and horses may, if the man be not upon the cart. 1 *Vent.* 36. Valuable things shall not be distrained for rent for benefit and maintenance of trades, which by consequence are for the commonwealth, and are there by the authority of law; as the

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horse in a smith's shop ; nor a horse in a hostry ; nor the materials in a weaver's shop for making of cloth ; nor cloth or garments in a tailor's shop ; nor sacks of corn or meal in a mill. 1 *Inst.* 47. Beasts belonging to the plough shall not be distrained, (which is the ancient common law of England, for no man shall be distrained by the utensils or instruments of his trade or profession, as the axe of the carpenter, or the book of a scholar,) while goods or other beasts may be distrained. 1 *Inst.* 47. But this rule holds only in distress for rent arrear, and the like ; but doth not extend to cases where a distress is given in the nature of an execution, by any particular statute, as for poor rates and the like. 3 *Salk.* 136. Furnaces, cauldrons, or other things, fixed to the freehold, or the doors or windows of a house, or the like, cannot be distrained. 1 *Inst.* 47. Things for which a replevin will not lie so as to be known again, as money out of a bag, cannot be distrained. 2 *Bac. Abr.* 109. But money in a bag sealed may be distrained, for that the bag sealed may be known again. By the 2nd W. Sess. 1, cap. 5, persons having rent in arrear on any demise, lease, or contract, may seize and secure any sheaves or cocks of corn, or corn loose, or in the straw, or hay being in any barn or granary, or upon any hovel, stack or rick, or otherwise, upon any part of the land charged with rent, and may lock up or detain the same, in the place where found, in the nature of a distress, so as the same be not removed, to the damage of the owner, out of the place where found and seized, but to be kept there (as impounded) till replevied or sold.

§ 3. Also, by the 11 G. 2, c. 19, the landlord may take and seize corn, grass, hops, roots, fruits, pulse, or other product growing, as a distress ; and the same may cut, gather, make, cure, carry, and lay up, when ripe, in the barns or other proper place on the premises ; and if there shall be no barn or proper place on the premises, then in any other barn or proper place which he shall procure, so near as may be to the premises ; the appraisement whereof shall be taken when cut, gathered, cured, and made, and not before. § 8. And notice of the place where the goods so

distrained shall be lodged, shall in one week after the lodging thereof, be given to the tenant, or left at the last place of his abode. § 9. And generally, whatever goods and chattels the landlord finds upon the premises, whether they in fact belong to the tenant or a stranger, are distrainable by him for rent, with the exceptions however above specified; for otherwise, a door would be opened to infinite frauds upon the landlord; and the stranger hath his remedy over by action on the case against the tenant, if by the tenant's default the goods are distrained. 3 Blackstone, 8. So where a stranger's beasts escape into the land, they may be distrained for rent, though they have not been *levant* and *couchant*, provided they are trespassers; but if the tenant of the land is in default in not repairing his fences, whereby the beasts came into the land, the landlord cannot distrain such beasts, though they have been *levant* and *couchant*, unless he have caused notice to be given to the owner, and the owner suffers them to remain there afterwards. *Lutw.* 354.

How to make a distress for rent in arrear and of the sale of the same.

The landlord himself or any other person as his bailiff by an authority from him in writing, may make the distress.

The warrant or authority, may be in the following form.

To Mr. A. B. my Bailiff, greeting :—Distrain the goods and chattels of C. D. (the tenant) in the house he now dwells in (or upon the premises in his possession) situate at — in the township of — in the — district, for the sum of — pounds, being the amount of one year's rent due to me for the same on the — day of — last, and for your so doing this shall be your sufficient warrant.

Dated the — day of — 18 I. J.

Being thus legally authorised to distrain, the first point to be gained in making a distress is to obtain legal admission into the premises. This is frequently a very difficult task. "An Englishman's house is his castle," which castle he is, naturally enough, very apt to fortify, if he apprehend an attack, by keeping his doors, and sometimes

all his windows, secured, to the great annoyance of both landlord and broker, the latter of whom is frequently obliged to have recourse to every subterfuge to gain admission. For this purpose it may be necessary to employ a man to watch the premises for a length of time, for an opportunity of effecting a legal entrance.

The general law on this subject is, that the distrainer cannot break a lock, nor open a gate; but if the outer door of a house be open, he may obtain access to the interior by force. Admission should in all cases be gained, if possible, at the front door. If, however, the inmates of the house make a common way, by passing in and out at the back part of the premises, it seems to be held that the landlord or his agent, will be justifiable in following them, and even through the window, if this be made subservient to the purposes of ingress or egress, and it can be found open, or not fastened.

A legal entry having been once obtained, all the doors of the inner rooms may be broken open, if locked, until sufficient distress be found to cover the rent and expenses: and if, after this, any force be resorted to, to dispossess the distrainers, application should be made to a magistrate to put the party into possession again.

The landlord, or his agent, having obtained legal admission into the premises for which the rent is due, the mode of proceeding, as set forth in law books in general, is as follows:

Some piece of furniture, or other personal chattel, found on the premises, is to be taken hold of, and if the landlord make the distress himself, he is to say, "I distrain this chair (or whatever else it may be) in the name of all the good and effects on these premises, as a distress for the sum of £———rent due to me at —— day last." Or, if the distress be made by a broker, he should say, "I distrain, &c. (as before) as a distress, for the sum of £———rent due to the landlord of these premises at —— day last, by virtue of an authority from the said —— to me given for that purpose." This authority, or, as it is more

commonly called, warrant, the agent is compelled to exhibit to the party upon whom distraint is made, if required.

These formalities, however, although they may be strictly correct, are not always observed; nor is it absolutely necessary that they should be. The usual way is as follows: the broker having obtained entrance states "that he has called from Mr. ——— the landlord for his rent, naming the amount." If the tenant reply that he is not prepared, the broker then intimates that he is sorry that his duty obliges him to distrain, and he must in obedience to the landlord's direction proceed to take an "Inventory." He then draws his papers from his pocket, exhibits the warrant and proceeds to take an Inventory of the goods.

In performing this part of his duty, the broker must be careful to make an inventory of so much of the goods only as may reasonably be supposed will be sufficient to cover the rent in arrear, and the expenses of the distress, appraisal and sale.

The inventory may be in the form following:—

AN INVENTORY of the several goods and chattels distrained by me, A. B., this ——— day of ———, in the year of our lord ———, in the houses, out-houses, and lands (*as the case may be*) of C. D., situate in ———, in the township of ———, in the ——— district, by the authority and on the behalf of E. F. for the sum of ——— pounds, being one year's rent due to him on the ——— day of ———

In the Dwelling House.

Two tables—six chairs—&c. &c.

In the Stable.

Two oxen—two cows—&c., and so on.

At the bottom of the inventory, subscribe the following notice to the tenant:—

Mr. C. D.

TAKE NOTICE, that I have this day distrained (as bailiff to E. F. your landlord) on the premises above mentioned, the several goods and chattels specified in the above inventory, for the sum of ——— pounds, being one year's rent due to the said E. F. on the ——— day of ——— last,

for the said premises ; and that unless you pay the said rent, with the charges of distraining for the same within five days from the date hereof, the said goods and chattels will be appraised and sold according to law. Given under my hand the ——— day of ——— in the year of our Lord ———.

W. T.

A true copy of the above inventory and notice must either be given to the tenant himself, or left at his house, or if there be no house, at the most notorious place on the premises.

The officer should have a person with him when he makes the distress, and also when he serves the inventory and notice, to examine the same, and to attest the regularity of the proceedings.

The goods may be removed immediately, and in the notice the tenant should be acquainted with the place to which they are removed ; but it is usual to put a man in possession, and let them remain on the premises till entitled by law to sell them, which is on the sixth day inclusive after the distress made, viz: goods distrained on the Saturday may be removed and sold on the Thursday afternoon following. *Wallace v King* 1 H. Bl. 13.

If the tenant require further time for the payment of the rent, and the landlord chooses to allow it, it is best to take a memorandum in writing from the tenant, "that he does consent that he should continue in possession of his goods and chattels in his house, (or upon the premises) for such a time longer, he (the landlord) having agreed not to sell them for that time, and that he will pay the expenses of possession." This memorandum prevents the landlord from being deemed a trespasser, which, after the expiration of five days, he otherwise would be, and might have an action of trespass brought against him for staying longer upon the premises.

If there be no allowance of, or agreement for further time, the officer should search at the expiration of five days at the sheriff's office, to see if the goods have been relieved ; if not, and the rent and charges still remain unpaid, he should send for a constable and two indifferent persons

to act as appraisers, who, having viewed the goods, the former must administer to the latter the following oath:

"You and each of you shall well and truly appraise the goods and chattels mentioned in this inventory, (holding it in his hand) according to the best of your judgment. So help you God."

The following memorandum should be then endorsed on the inventory:—

MEMORANDUM,—That on the —— day of —— in the year of our Lord ——, A. B. of &c. and C. D. of &c. two sworn appraisers, were sworn upon the Holy Evangelists, by me, J. K. of &c., constable, well and truly to appraise the goods and chattels mentioned in this inventory, according to the best of their judgment.

As witness my hand,

J. K. constable.

Present at the time of swearing the said A. B. and C. D. as above, and witness thereto.

L. M.

O. P.

The appraisers must be entirely disinterested in the distress, and the broker or distraining officer must not be one, otherwise the distress would be unlawful.

After the appraisers have valued the goods, an indorsement should be made on the inventory, as follows:—

We, the above named A. B. and C. D. being sworn upon the Holy Evangelists by J. K., the constable above named, well and truly to appraise the goods and chattels mentioned in this inventory, according to the best of our judgment, and having viewed the said goods and chattels, do appraise the same at the sum of —— pounds. As witness our hands the —— day of ——, in the year of our Lord ——.

A. B. } Sworn appraisers.
C. D. }

When the goods are thus valued, it is usual for the appraisers to buy them at their own valuation, and a receipt at the bottom of the inventory, witnessed by the constable, is usually held a discharge. But if the distress be of considerable value, it is much more advisable to have a pro-

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per bargain and sale between the landlord, the constable, the appraisers, and the purchaser.

The appraisers, however, are not compelled to take them at their valuation and if the tenant be dissatisfied, the usual course is, to proceed to sell the goods by auction to the highest bidder, giving sufficient notice to ensure a fair sale.

The goods being disposed of, the rent in arrear is deducted, with all reasonable charges of distress and sale, and the overplus (if any) returned to the tenant.

If the produce be not sufficient to cover the demand, the landlord may distrain again.

A rent may not be distrained for in the night, but in the day time. 1 *Inst.* 142, for before sun-rising or after sunset, no man may distrain but for damage feasant. *Mirroure*, c. 2, § 26.

Distress how to be Demeaned.

By 11 G. 2, § 19, any person distraining may impound or otherwise secure the distress of what kind soever it be, in such place or in such part of the premises as shall be most convenient; and may appraise and sell the same as any person before might have done off the premises.

§ 10. Cattle distrained may not be worked or used, unless for the owners benefit, as a cow milked, or the like.—*Cro. Jac.* 148. and if the distress be lost by the act of God, as if the distress die in the pound, without any default in the distrainer, in such case he may distrain again. 1 *Salk.* 248.

By stat. 2 W. Sess. 1, c. 5. Where any goods shall be distrained for rent, and the tenant or owner shall not, within five days after such distress, and notice thereof left at the premises, replevy the same, the person distraining, with the sheriff, under sheriff, or constable of the peace, shall cause the goods distrained, to be appraised, by two sworn appraisers, (whom such sheriff or constable shall swear) to appraise the same truly, and after such appraisal, the same shall be sold for the best price that can be got, for satisfaction of the rent and charges of the distress,

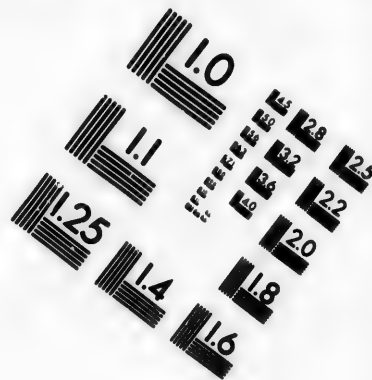
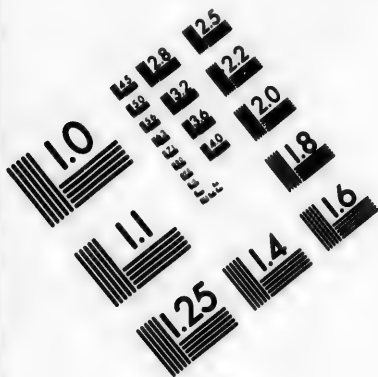
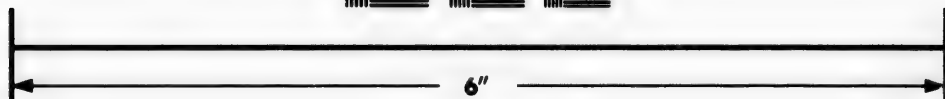
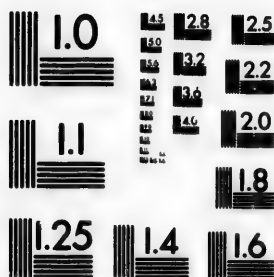


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appraisement and sale ; leaving the overplus (if any) with the sheriff, under sheriff or constable, for the owners use.

Fraudulent removal of Goods.

By the 11 G. 2. c. 19. § 1. If any tenant for life, years, at will, sufferance, or otherwise, shall fraudulently, or clandestinely, convey off the premises his goods or chattels, to prevent the landlord from distraining, such landlord, or any person by him lawfully empowered, may, in thirty days next after such conveying away, seize the same, wherever they shall be found, and dispose of them in such manner as if they had been distrained on the premises. § 2. But no landlord shall distrain any goods sold bona fide, and for a valuable consideration, before such seizure made, to any person not privy to such fraud. § 3. And if any tenant shall so fraudulently remove and convey away his goods or chattels, or if any person or persons shall wilfully and knowingly aid or assist him in such fraudulent conveying away or carrying off any part of his goods or chattels, or in concealing the same, every person so offending shall forfeit to the landlord *double the value* of such goods, to be recovered in any court of record.

§ 4. But if the goods and chattels so fraudulently carried off or concealed shall not exceed the value of £50, the landlord, or his agent, may exhibit a complaint, in writing, before *two* justices of the peace of the same county or division, residing near the place where such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed ; who may summon the parties concerned, examine the fact, and all proper witnesses, upon oath, (or if a quaker, upon affirmation) and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged ; and to inquire in like manner of the value of such goods and chattels, and upon full proof of the offence, by order under their hands and seals, the said justices shall adjudge the offender or offenders to pay *double the value* of the said

goods and chattels to such landlord, his bailiff, servant, or agent, at such time as the said justices shall appoint; and if the offender or offenders, having notice of such order, shall refuse or neglect so to do, they shall, by their warrant, levy the same by distress; and for want of such distress, may commit the offender or offenders to the house of correction, there to be kept to hard labour, without bail or mainprize, for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied.

§ 5. Persons aggrieved by order of such justices, may appeal to the next general or quarter sessions, who may give costs to either party.

§ 6. And where the party appealing shall enter into recognizance, with one or two sureties, in double the sum so ordered to be paid, with condition to appear at such sessions, the order of the justices shall not be executed against him in the mean time.

§ 7. Where any goods or chattels, fraudulently or clandestinely conveyed or carried away, shall be put, placed, or kept in any house, barn, stable, out-house, yard, close, or place locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrear of rent, it shall be lawful for the landlord, or his steward, bailiff, receiver, or other person or persons impowered, to take and seize, as a distress for rent, such goods and chattels, (first calling to his assistance the constable, headborough, or other peace officer of the district, &c.); and in case of a dwelling-house, (oath being first made before a justice of the peace, of a reasonable ground to suspect that such goods or chattels are therein) in the day time, to break open and enter into such house, barn, stable, out-house, yard, close, or place, and to take and seize such goods and chattels for the said arrears of rent, as he might have done if they had been in any open place.

Rent when payable by Executors.

If the testator die in possession of a term for years it will vest in his executor; and although it be worth nothing,

he cannot waive it, for he must renounce the executorship entirely or not at all.

But this is to be understood only where the executor has assets, for he may relinquish the lease if the property be insufficient to pay the rent ; but in case there are assets to bear the loss for some years, though not during the whole term, it seems the executor is bound to continue tenant till the fund is exhausted, when, on giving notice to the lessor, he may waive the possession. *Woodfall*, 300.

Executors or administrators are also bound by the covenants of the lease, so far as they have assets.

Of Illegal Distress and the Remedy.

A distress may be either wrongful, irregular, or excessive.

In case of a *wrongful* distress the tenants remedy is either to replevy the goods in due time, or to bring an action of trespass against the party.

Where the immediate restoration of the goods is a material object with the tenant, he should replevy—this must be done within *five* days after notice of the distress given, by entering into a bond to the sheriff with two housekeepers as sureties, in double the value of the goods distrained ; upon which the sheriff is bound to re-deliver the goods to the tenant to abide the event of the suit. The condition of the bond is, “that the tenant shall try the validity of the distress and return the goods if a return shall be adjudged.”

If the tenant do not proceed in due course to try the validity of the distress, or if judgment be against him, the landlord may proceed against the sureties in the bond, or against the sheriff if he has taken insufficient sureties.

But where the tenant does not chose to put himself to the inconvenience of finding sureties to the sheriff, preferring rather the temporary loss of his goods, he may, in case of wrongful distress, bring an action of trover against the party unlawfully distraining, or he may proceed by writ of trespass upon the stat. of 2 William and Mary, sess. 1. c. 5. s. 5. which enacts “that in case any

distress and sale be made by virtue of any distress for rent pretended to be in arrear and due, where in truth no rent is in arrear and due to the person distraining, or in whose name or right such distress shall be made, that then the owner of such goods, his executors or administrators, may, by action of trespass, or upon the case, to be brought against the distrainer, his executors or administrators, recover *double the value of the goods* so distrained and sold, together with *full costs of suit.*"

Irregular Distress.

An *irregular* distress is where the cause of the distress is lawful, but some irregularity arises in the conducting or disposal of it.

Formerly, if the distrainer, or his agent, committed any irregularity in conducting a distress, the whole distress was thereby vitiated, and the parties were deemed trespassers *ab initio*, from the beginning—or more properly, perhaps, from the beginning to the end. But by stat. 2 Geo. II. c. 19. it is enacted, "that where any distress shall be made for rent justly due, and any irregularity, or unlawful act, shall be afterwards done by the distrainer or his agent the distress itself shall not therefore be deemed to be unlawful, nor the party or parties making it a trespasser or trespassers *ab initio*; but the party aggrieved by such irregularity may recover full satisfaction for the special damage sustained thereby, but no more, in an action of trespass, or on the case, with full costs of suit."

By the 20th section of the same act it is provided, that no damages shall be recoverable for irregularity of distress, if the distrainer, or his agent, shall make tender of amends before action be brought. If after such tender, the case shall notwithstanding go into court, it would of course, remain for the jury to decide whether such tender of compensation were commensurate to the irregularity committed and the injury sustained.

An *excessive* distress is where goods are distrained for rent justly due, but to so exorbitant an extent as to bear no proportion to the amount distrained for; as two or three oxen for 12 pence.

By the statute of Marlbridge, it is enacted, "that distress shall be reasonable, and not too great; and that he who taketh great and unreasonable distress shall be *grievously amerced* for the excess thereof." An action on the case will therefore lie upon this statute for an excessive distress.

In the construction of this statute, it appears to have been established, that the distress of a horse or an ox for a small sum, where equal opportunity presented itself to take a sheep or a pig, would be deemed an excessive distress, and come within the meaning of the act; but if no other distress presented itself, the taking, in that case, of any one entire thing, however great its value, would be justifiable. An exception must also be made where the goods are of an uncertain or imaginary value, as works of fancy, pictures, jewels, race-horses, and the like, the value of which no person distraining can be supposed to be capable of appreciating. In these cases the distress of an article which may turn out to be of considerably higher value than the sum distrained for, would not be deemed excessive, nor within the penalties of the statute.

Ejectment.

If the landlord have no legal title to the premises, it follows of course that he cannot execute a valid lease of the same. It is, therefore, important for tenants who take building leases for a long term of years, and who intend to expend a considerable sum of money upon the premises, to ascertain in the first place the strength of their landlord's title. This is easily done by searching at the register office of the county, where the tenant will be able to discover what title the landlord has, and whether it is encumbered by mortgages or otherwise. The tenant should also be satisfied that there are no outstanding judgments in the king's bench or district court against the landlord. If the

premises are under mortgage, and the mortgage deed has been duly registered, the legal estate is in the mortgagee, and the landlord alone cannot execute a valid lease. The mortgagee should join in such lease, and the rent be reserved to him accordingly during the existence of the mortgage.

If a tenant in possession be served with an action of ejectment by a person disputing the landlord's title, the law requires the tenant to give his landlord immediate notice thereof, or by stat. 11 G. 2, c. 19, he will be liable to forfeit three years rent to his landlord.

A tenant to a mortgagor who does not give notice of an ejectment brought by the mortgagee, is not however within the rule. 1 T. R. 467.

Attornment.

An attornment in law signifies the acknowledgment, by the tenant, of a new title in a purchaser or grantee, since the execution of the lease. It was formerly necessary to procure an attornment from the tenant, in order to invest the new landlord with a right to enforce the payment of the rent; but it is not now necessary, as the stat. 4 Ann. c. 16, § 9, enacts, that all grants and conveyances of land, &c. shall be good, without the attornment of the tenants.

A purchaser may therefore legally distrain for rent become due after the completion of his purchase; but notice must be given of the grant to the tenant by the grantee, otherwise the payment of rent by him to the former landlord will be good and the grantee will be left to his remedy, by action, to recover the same back from such former landlord. 1 T. R. 379.

Form of a Lease, with Covenants for Repairing the Premises, and for Renewal after its expiration.

This Indenture, made this _____ day of _____ in the year of our Lord _____; between A. B. of _____ of the one part, and C. D. of _____ of the other part; witnesseth, that for and in consideration of the yearly rent, and of

the covenants, provisoes, and agreements, hereinafter reserved, and contained, by and on the part and behalf of the said C. D., his executors, administrators and assigns, to be paid, kept, observed, and performed, he the said A. B. hath demised and leased, and by these presents doth demise and lease unto the said C. D., his executors, administrators, and assigns, all that messuage and dwelling-house, situate and being in — street, in the township of —, in the — district: together with all ways, paths, passages, vaults, cellars, yards, water-courses, and other conveniences, to the said premises hereby demised, belonging, or in anywise appertaining, or reputed or known to be part thereof; to have and to hold the said messuage and premises, with their appurtenances unto the said C. D., his executors, administrators, and assigns from the — day of — now last past, for and during the term of — years thence next ensuing, and fully to be completed and ended; determinable nevertheless at the expiration of the first seven or fourteen years thereof, upon such conditions as are hereinafter mentioned; he the said C. D., his executors, administrators, or assigns paying yearly, and every year during the said term, unto the said A. B., his heirs or assigns, the yearly rent or sum of £ — of lawful money of the Province of Upper Canada, by equal quarterly payments, on the respective days following viz: on the 25th day of March, the 24th day of June, the 29th of September, and the 25th day of December, in every year (save and except at all times during the said term, such proportional part of the said yearly rent of £ — as shall or may grow due during such time as the messuage or tenement hereby demised shall, without the hindrance of the said C. D. his executors, &c. be and remain uninhabitable, by reason of accidental fire), and to be clear of all and all manner of parliamentary, parochial, and other taxes, assessments, rates, and deductions whatsoever; the first quarterly payment thereof to commence and be made on the — day — next ensuing the date of these presents: and the said C. D. doth hereby for himself, his heirs, executors &c. covenant, promise, and agree, to and with the said

A. B., his heirs and assigns, that he, the said C. D. his executors, &c. shall and will well and truly pay, or cause to be paid, unto the said A. B., his heirs or assigns, the said yearly rent or sum of £——, at the several days or times, and in the manner hereinbefore appointed for payment thereof—(except in case of accidental fire as aforesaid) —And shall and will, at his and their own proper costs, cause to be well and sufficiently painted all the outside wood and iron work belonging to the said messuage and premises, hereby demised, every third year, during the continuance of the said term ; and at his and their like proper costs and charges shall and will, at all times during the continuance of the said term, keep in a good, sufficient, and tenantable state of repair, as well all and singular the glass and other windows, wainscoats, rooms, floors, partitions, ceilings, tileings, walls, rails fences, pavements, grates, sinks, privies, drains, wells and water-courses ; as also all and every other the parts and appurtenances of the said messuage and premises hereby demised (damage happening by casual fire only excepted). And further that it shall be lawful for the said A. B., his heirs, &c. either alone or with others, twice in every year, during the said term hereby granted, at such times of the year as to him or them shall seem meet, to enter at seasonable times of the day, into and upon the said messuage or tenement and premises hereby demised and every part thereof, and there to view and examine the state and condition thereof, notice of such intention to view being at all times previously given unto the said C. D., his executors, &c. three days at least before the same shall take place ; and in case any decay or want of reparation shall be found on such view, the said C. D. for himself his executors, &c. doth hereby covenant and agree, to and with the said A. B., his heirs &c. to cause the same to be well and sufficiently repaired and amended within the space of six months after notice thereof in writing shall have been given to him or them for that purpose ; and the said C. D. doth hereby for himself, his executors, &c. further promise, covenant, and agree, to and with the said A. B. his heirs, &c. that he the said C. D. his executors, &c.

at the end or earlier determination of the said term hereby granted, shall and will leave and yield up unto the said A. B., his heirs &c. all and singular the said messuage and premises, with their appurtenances, in such good, sufficient and tenantable state of repair as aforesaid; together with all and every the doors, locks, keys, bolts, bars, chimney-pieces dressers, shelves, water pipes, and other things, mentioned in an inventory or schedule hereunder written or hereunto annexed, in as good plight and condition as the same now are (reasonable use and wear thereof, and casualties happening by fire, only excepted).—*Provided always*, that if the said yearly rent hereby reserved, or any part thereof, shall be in arrear and unpaid for the space of — days next after any of the days whereon the same is hereinbefore covenanted to be paid as aforesaid (it being first lawfully demanded); or if the said C. D. his executors, &c. shall not well and truly observe and keep, according to their intent and meaning, all and every the covenants, clauses, provisoes, and agreements, by him and them to be observed and kept; then and from thenceforth it shall be lawful for the said A. B. his heirs &c. to re-enter upon the said demised messuage and premises, and the same to have again, re-possess, and enjoy, as his and their first and former estate; and that from and after such re-entry made, this lease and every clause herein contained, shall be utterly void, to all intents and purposes. And the said A. B., for himself, his heirs executors, &c. doth covenant, promise, and agree, to and with the said C. D., his executors, &c. that he the said C. D., his executors &c. paying the rent hereby reserved, in manner aforesaid, and performing the covenants and agreements herein contained, shall and lawfully may, peaceably and quietly, use, possess, and enjoy the messuage and premises hereby demised, for and during the said term of — years hereby granted, without any action, let, or interruption whatsoever of the said A. B., his heirs &c. or any person or persons lawfully claiming, or to claim by, from, or under him or them. And moreover, that the said A. B. his heirs, &c. shall and will, before the expiration of this present lease,

on the request and at the costs and charges of the said C. D., his executors, &c. grant and execute unto him and them a new and fresh lease of the messuage or tenement, and all other the premises hereby demised, with their appurtenances, for the further term of — years, to commence from the expiration of the term hereby granted; the same to be at the same yearly rent, payable in like manner, and under and subject to the like covenants, provisions, and agreements (except a covenant for the renewal thereof, at the end of such further term), as are contained in these presents; such new lease, however, to be granted and to be valid only on condition that the said C. D., his executors, &c. do execute a counterpart thereof, and also pay unto the said A. B., his executors, &c. the sum of £ — of lawful money &c. at the time of executing the said lease, by way of premium for the renewal thereof; and also that if the said C. D., his executors &c. shall be desirous to quit the said messuage or tenement and premises hereby demised, at the expiration of the first seven or first fourteen years of the term of — years hereby granted, and of such his or their desire, shall give notice in writing to the said A. B., his executors, &c. six calendar months before the expiration of the said first seven or fourteen years (as the case may be); then and in such case (all arrears of rent being duly paid, and the said messuage or tenement, and all the other premises hereby demised, being in such repair as they are hereinbefore covenanted to be maintained and left in), this lease and every clause and thing herein contained, shall, at the expiration of such first seven or fourteen years of the said term of — years, hereby granted (whichever be in the said notice expressed) determine and be utterly void, to all intents and purposes, in like manner as if the whole term of — years had been run out and expired; any thing in these presents contained to the contrary thereof notwithstanding. In witness whereof the said parties have hereunto interchangeably set their hands and seals, the day and year above written.

Signed, sealed and delivered in the
presence of E. F. & G. H.

A. B. (Seal.)
C. D. (Seal.)

Covenant by the Lessee not to use or assign the premises for any Offensive Trade.

And also that the said C. D., his executors, &c. shall not, at any time during the continuance of the said term, use, or carry on or suffer to be used or carried on, in the said demised messuage and premises, or assign over the present indenture of lease or set over or let any part thereof to any person or persons using or carrying on the trade, business, or calling of ———, baker, brewer, butcher, currier, distiller, dyer, foundry, smith, soap-boiler, school-master, or school mistress, sugar-baker, auctioneer, pewterer, tallow chandler, or tallow-melter, working brazier, tinman, tripe-boiler, pipe-maker, pipe-borer, plumber, or any other noxious or offensive trade, business, or calling whatsoever, without the consent in writing of the said A. B., his executors, &c. first had and obtained for that purpose ; nor shall nor will, without such consent as aforesaid, make, or cause to be made, any addition or alteration whatever, in, upon, or about the said messuage or tenement, and premises, or any part thereof.

Form of an Assignment of Lease and Premises by Indorsement.

Know all Men by these Presents, that I the within-mentioned A. B. for the consideration herein-after mentioned, have agreed to assign over unto C. D. now or late of ———, his executors, administrators, and assigns, the within-mentioned messuage and premises. Now these Presents Witness, that, in pursuance of the said agreement, and for and in consideration of the sum of ——— pounds of lawful money of the Province of Upper Canada, to the said A. B. in hand paid by the said C. D. at or before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, he the said A. B. hath assigned, transferred, and set over, and by these presents doth assign, transfer and set over, unto the said C. D. his executors, administrators, and assigns, all

that messuage, and all and singular other the premises in and by the within written indenture and lease demised, or mentioned, or intended so to be, with their appurtenances; and all the estate, right, title, interest, term of years to come or unexpired, property claim, and demand whatsoever, of the within-named A. B. of, in, or out of the said premises, every or any part thereof, together with the said indenture of lease; to have and to hold all and singular the said premises hereby assigned, with their and every of their appurtenances, unto the said C. D. his executors, administrators, and assigns, from the feast day of St. Michael the Archangel, now next ensuing the day of the date hereof, for and during all the rest, residue, and remainder which shall be then to come and unexpired of the term of twenty-one years in and by the within-written indenture of lease granted thereof (determinable nevertheless at the option of the said C. D. his executors, administrators, and assigns, at the end of the first seven or fourteen years of the term of twenty-one years within granted, upon the said C. D. his executors, administrators assigns, giving such notice to the said A. B. his executors, administrators, and assigns, as the said A. B. is required to give in and by the within-written indenture), subject nevertheless to the payment of the rent, and performance of the covenants in the same indenture of lease reserved and contained on the tenant's or lessee's part, from henceforth to be paid, done, and performed. [Here may be added covenants for quiet enjoyment, for further assurance and indemnity.]

In witness whereof the said parties have hereunder set their hands and seals, this ——— day of ——— one thousand ———

Witness E. F.
G. H.

A. B. (Seal.)
C. D. (Seal.)

A short form of a Lease.

THIS INDENTURE WITNESSETH that A. B. of — doth grant, demise and lease unto C. D. of ——— his executors and administrators *All that &c. (describing the pre-*

mises) To hold unto the said C. D. his executors and administrators, for the term of — years from the date hereof, at the yearly rent of £ — payable half-yearly, on the — day of —, and the — day of — in each year. And the said C. D. for himself, his heirs, executors and administrators, doth hereby covenant with the said A. B. his heirs and assigns, to pay the said rent accordingly, and all taxes of every description chargeable on the premises, or the lessor, tenant, or occupier thereof during the said term; also to keep the said premises in good and tenantable repair, order and condition during the term, and leave the same in such good repair at the end of said term, (reasonable wear and tear and accidental damage from fire, tempest, or other inevitable accident, always excepted.) *Provided always*, and these presents are granted upon this express condition, that if the said C. D. his executors or administrators, shall at any time during the term, assign, underlet, or in any way part with the possession of the said premises to any person or persons whatsoever without the consent in writing of the said A. B. his heirs or assigns first obtained, or if the said rent or any part thereof, shall be in arrear twenty one days after the same shall have become due and been lawfully demanded, or if any material damage or alteration shall be made or done upon the premises or any part thereof, without such license and consent as aforesaid, or any other breach be committed in the terms and conditions of this lease, then the term hereby granted, shall in any of such cases be void, and it shall be lawful for the said A. B. his heirs, and assigns immediately to re-enter. In witness whereof the said parties have hereunto set their hands and seals, the — day of — 183

A. B. (L. S.)
C. D. (L. S.)

In the presence of

*Agreement for Letting Unfurnished Apartments, for
a Term certain, with a Quarter's Notice.*

MEMORANDUM of Agreement, made this — day of —, 18—, between A. B. of — and C. D. of —

_____. whereby the said A. B. agrees to let, and the said C. D. agrees to take, all [here insert the particulars of the apartments] with their and every of the appurtenances thereunto belonging, being part of a house and premises now in the occupation of the said A. B. situate and being No. —, in _____ street, aforesaid, to hold the same, with their appurtenances, and the sole and uninterrupted use and occupation thereof, unto the said C. D. his executors, administrators, and assigns, for the term of _____, to commence from _____ now next ensuing, at the next yearly rent of £_____ of lawful money of the Province of Upper Canada, free and clear of and from all and all manner of taxes, rates, and assessments whatsoever, parliamentary, parochial, or otherwise howsoever, payable quarterly, on the usual quarter-days. And the said C. D. doth hereby agree to make punctual payments of the rent hereby reserved, on the day and times the same is made payable; and it is further agreed, that at the expiration of the said term —, the said C. D. may hold, occupy, and enjoy the said —, from quarter to quarter as the case may be) for so long a time as the said A. B. and C. D. may and shall agree; and that each party shall be at liberty to quit possession, on giving to the other a quarter's notice or warning in writing for that purpose; and it is also agreed between the said parties that when the said C. D. shall quit the said premises, he shall leave them in as good condition and repair as they shall be in on his taking possession, reasonable use and wear only excepted.

As witness our hands,
Witness E. F.

A. B.
C. D.

Agreement for Letting Furnished Apartments for a Term certain, with a Quarter's Notice.

MEMORANDUM of Agreement made this _____ day of _____ in the year _____, between A. B. of _____ of the one part, and C. D. of _____, of the other part by which the said A. B. agrees to let unto the said C. D. [here insert the full particulars of the apartments] situate in _____ street, in

in the parish of — aforesaid, completely furnished [which furniture is mentioned in a schedule hereunder written, and being part of the house belonging to the said A. B. to hold the said premises, for and during the term of —, to commence from — now next ensuing, at and under the yearly rent of £— of lawful money of this province, payable quarterly, by even and equal portions, the first quarterly payment thereof to be made on the — day of — now next ensuing: And it is agreed by and between the said parties, that he the said C. D. after the expiration of the said term of — may hold and enjoy the said premises, with the said furniture, from quarter to quarter (as the case may be) as long as the said parties shall agree, at the same rent as aforesaid, until a *quarter's notice* or warning to quit be given on either side; and it is further agreed, between the said parties, that when the said C. D. shall quit the said premises, he shall and will leave the furniture and other things mentioned in the schedule or inventory thereof hereunder written, in as good state and condition as the same are now in reasonable wear and use thereof only excepted.

As witness our hands,

A. B.

Witness E. F.

C. D.

N. B. The inventory of furniture should follow.

Form of a Tenant's consent that Possession shall be continued beyond the period limited by the Statute.

I —, do hereby consent that Mr. —, my landlord, who on the — day — last, distrained my goods and chattels for rent due to him, for the premises which I now inhabit and hold of him, situate —, shall continue in possession of the said goods on my premises above mentioned, for the space of — days from the date hereof, the said Mr. — having at my request agreed to delay the sale of the said goods, in order to enable me to discharge the amount due to him.

of 1800

And I the said —, do hereby agree to pay the expenses of keeping the said possession.

As witness my hand, this — day of — 18—.

A. B.

Forms of Notice to quit.

Notice by the Landlord to his Tenant.

Sir,

I hereby give you notice to quit the premises which you hold of me, situate at — in the township of — in the — district, on the — day of — next, or at the expiration of the current year of your tenancy.*

Dated the — day of — 18

To

Yours, &c.

J. K.

A. B.

Another form.

Mr. C. D. (Tenant)

I hereby give you notice to quit and deliver up to me on the — day of — next, the peaceable and quiet possession of all those two messuages, tenements and dwelling houses with their appurtenances, situate at — in the township of — in the — district, which you lately held under Mr. J. S. and which you now hold of me, as tenant from year to year, provided your original tenancy commenced on that day; otherwise that you quit and deliver up to me the peaceable and quiet possession of the said premises at the end of the year of your tenancy, which shall expire next after the end of half a year from the date hereof

Dated this — day of — 18—

A. B.

(landlord.)

* This precaution becomes necessary in order to prevent the nonsuit which the party may obtain when the person seeking possession is not certain of the time when the tenancy commenced.

Every notice to quit should be served by a witness who can afterwards, if required, prove such service, and he should keep a duplicate thereof for such occasion.

Landlord & Tenant.*Notice to quit Lodgings.*

SIR,

I hereby give you notice to quit and deliver up on or before — next, the rooms or apartments and premises which you now hold of me, in this house (as the case may be) together with all and singular the goods, chattels, and furniture let to you with the same.

Dated this — day of — 18—

To E. N. (tenant)

E. F. (landlord.)

Notice to the tenant either to quit the premises or pay double value.

SIR,

I hereby give you notice to quit and yield up to me on the — day of — next, peaceable and quiet possession of the messuage, lands, tenements and premises with its appurtenances, which you now hold of me situate at — in the township of — in the — district, in failure whereof I shall require and insist upon double the value of the said premises according to the statute in such case made and provided.

Dated this — day of

To A. B. (tenant.)

E. N. (landlord.)

Notice to quit by the Tenant.

SIR,

I hereby give you notice that on the — day of — I shall quit possession of the messuage or tenement and premises which I now hold of you situate at — in the township of — in the — district.

Dated this — day of — 18—

yours &c.

To T. E. (landlord)

A. B. (tenant)

Notice by the tenant to quit lodgings.

SIR,

This is to give you notice that on the — day of — next I shall quit and deliver up possession of the rooms

or apartments and premises which I now hold of you in this house.

Dated this——day of —— 18—

To A. B. (landlord,)

N. O. (lodger)

Notice to tenant to repair.

SIR,

You are hereby required to put in good and tenantable repair, all and singular the messuage or tenement and premises which you now hold of me, situate at &c. particularly the servant's hall in the said messuage or tenement, and the tiling or roof at the northern end thereof, (as the case may be).

Witness my hand this —— day of —— 18 .

To E. N. (tenant.)

P. L. (landlord.)

Notice to pay rent.

SIR,

This is to warn you that unless you pay or cause to be paid unto me, on or before the —— day of —— the sum of —— being a year's rent, due on the —— day of —— for the messuage or tenement, and premises which you now hold of me, at the yearly rent of —— situate &c. I shall claim and insist upon such forfeiture thereof, as I may be by law entitled to.

Witness my hand the —— day of —— 18

To J. K. (tenant.)

A. Z. (landlord.)

SUMMARY PUNISHMENT.

By the 4 W. 4. c. 4. § 1. It is enacted that if any person shall assault or beat any other person, any justice of the peace may hear and determine the offence; and upon conviction, the offender shall pay any sum, not exceeding £5, in the discretion of the justice. § 2. But if the as-

sault was made with the intent to commit felony, or if otherwise a fit subject for prosecution by indictment, the case shall then be dealt with as before the passing of this act.

§ 3. If any person shall wilfully or maliciously commit any damage, injury or spoil, to or upon any real or personal property whatsoever, either of a public or private nature, (not amounting to felony,) he shall, on conviction, forfeit any sum not exceeding £5, at the discretion of the justice, to be paid to the party aggrieved, except when such party shall have been examined in proof of the offence; the act, however, excepts any party trespassing under a fair claim of right. § 5. Any person found committing trespass may be apprehended without a warrant, by any peace officer, owner, or authorised servant. § 6. Any person wilfully disturbing any religious congregation by rude and indecent behaviour, or noise, either within the place of worship, or so near as to disturb the meeting, upon conviction before one justice, on the oath of one or more witnesses, shall forfeit any sum not exceeding £5, as the justice shall think fit. § 7. To be levied, with costs, by distress, and in default, commitment to the common gaol for any term not exceeding one month, unless sooner paid. § 8. Prosecutions under this act to be commenced within three calendar months. § 9. Directs that the party shall be summoned, and in case of non-appearance, the justice may proceed *ex parte*. § 10. Enacts that any person, preferring a frivolous charge, shall pay the costs, which shall be levied by distress; and if no distress, the party shall be committed for any term not exceeding ten days. By § 12. Persons convicted under this act shall be released from further prosecution for the same offence. § 13. And aiders and abettors shall be punished as principals. § 14. Persons convicted may be discharged from such conviction, upon making satisfaction to the party injured. § 16. If in any case the title to any lands, &c. shall come in question, then the case shall not be decided under this act, but be otherwise disposed of according to law. § 17. Any person aggrieved may appeal to the next general quarter sessions, giving the other party notice in writing of such appeal, and of the cause and matter, within three

days after conviction, and seven days before the sessions, and entering into recognizance with two sureties before a justice, to appear and try such appeal, and abide the judgment of the court; and the sessions shall hear and determine the same; and in case of the dismissal of the appeal or affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall issue process for enforcing such judgment. § 18. The court shall have power to empanel a jury to try the matter, and administer the following oath to such jury.

“ You ———, do solemnly swear that you will well and truly try the matter of the complaint of C. D. against E. F. and a true verdict give, according to the evidence. So help you God.”

§ 19. Directs that justices shall transmit convictions to the next general quarter sessions. § 20. that no conviction shall be quashed for want of form, and no commitment void by reason of any defect therein, provided that it be alleged that the party has been convicted, and there be a good and valid conviction. § 21. Actions against any person for any thing done in pursuance of this act, shall be laid in the district where the fact was committed, and shall be commenced within six calendar months after the fact committed; and notice in writing of such action, and the cause thereof, shall be given to the defendant one calendar month, at least, before the commencement of the action; and no plaintiff shall recover in such action, if tender of sufficient amends shall have been made before such action brought, or a sufficient sum paid into court after such action brought on behalf of the defendant; and if a verdict shall be given for the defendant, he shall recover his full costs, as between attorney and client. § 22. His Majesty's pardon may be extended to any person imprisoned under this act. § 23. Fines, forfeitures and penalties shall be paid to the pathmaster or street surveyor of the division where the offence is committed, in aid of the roads. § 24. This act to continue in force four years and to the end of the then next ensuing *parliament*, (not *session* which, however, was probably intended.)

TOWNSHIP MEETINGS, &c.

By 5 W. 4. c. 8. Intituled, "an act to reduce to one act of parliament, the several laws relative to the appointment and duties of township officers in this province, except an act passed in the 4th year of Wm. the 4th entitled an act to regulate line fences and water courses, &c." sundry clauses of former laws relative to the townships are repealed and the following provisions enacted.

Town Meeting.

The township clerk for the time being in each township, shall assemble the inhabitants or freeholders liable to pay any assesment or rate of such township, on the first Monday in January, at the hour of ten o'clock in the forenoon, at such place as shall have been agreed upon by the previous township meeting, or if no place agreed upon, then at the place where such previous meeting was held. The township meetings for the year next ensuing the passing of this act, shall be holden at the places of the last meetings; and the township clerk shall affix a notice of the time and place of such meeting in three of the most public places in the township, and the inhabitants so assembled, shall choose a chairman and until such chairman is chosen, the township clerk shall preside. § 2.

Qualification.—No person shall be qualified to vote at any township meeting, unless he be a householder or freeholder in such township, of the age of 21 years, and all matters and questions at such meetings shall be decided by a majority of votes then present. § 3.

Any unqualified person voting, shall be liable to a penalty of not less than 5s. nor more than 20s., to be recovered and applied as other fines under this act, provided the complaint be made within three months, unless it shall appear to the court, that the vote was not objected to, and that the offence was committed through ignorance § 4.

In case of neglect by the town clerk to convene the meeting, the inhabitants may nevertheless lawfully meet and transact business. § 5.

Choosing Officers.

At such meeting, the inhabitant house-holders and freeholders shall choose a clerk, also three proper persons to be commissioners, one assessor, one collector, *any* number to serve as overseers of highways, roads and bridges, and any number to serve as pound-keepers as they shall deem expedient for the year; but no person sha'l be liable to serve any township office for two years in succession, except in case of neglect or refusal to appoint particular officers for the year; in such case, the officers who shall not be relieved by the appointment of successors, shall continue in office for the year; but no person shall be liable to serve who does not reside in the township. § 6.

New Townships.

Townships not having before held any meetings, may hold such meeting when such townships contain thirty inhabitant householders or freeholders; townships not containing that number, shall be attached to the adjacent township containing the smallest number of inhabitants authorised to hold a township meeting; and the officers appointed at such meeting, shall serve for both townships. §7. In any township which has not before held any meeting, a public notice, signed by a majority of the inhabitant householders and freeholders may be affixed in at least three of the most conspicuous places in the township fifteen days previously, stating that a public meeting will be held on the first Monday in January, at some certain place in the township, for the appointment of township officers for the year. §8.

Cattle and Fences, &c.

The inhabitant householders and freeholders at township meetings, may determine and order in what manner and at what periods, and what description of horned cattle, horses, sheep and other animals (not expressly provided for by law) shall be allowed to run at large, or be restrained from so doing, within the township, for the year;

also the fine upon the owners of cattle running at large, contrary thereto, and make such rules and regulations relative to pits, precipices, and deep waters or other places, dangerous to travellers, or the destruction of weeds detrimental to husbandry ; the height and description of fences ; and such other matters connected with the same, as may tend to promote the peace and welfare of the township. § 9.

Township Clerk.

It shall be the duty of the clerk appointed as aforesaid for any township, to record all such matters as shall be lawfully transacted at such meeting, and all other matters relating to the township it shall be his duty to record; such record and all other records, papers, monies unexpended, and property of the township in his hands, shall be faithfully kept and preserved, and by him delivered to his successor. § 10. Every township clerk shall make out two copies of the proceedings of the meeting at which he was appointed, one of which he shall post up in a conspicuous manner at the place where such meeting was held, and transmit the other to the clerk of the peace to be filed in his office as a record, and open to inspection, on payment of one shilling for each search. § 11.

Notices of Appointments.

The township clerk shall cause the several township officers to be served with a notice of their appointment, signed by his hand, within ten days after their appointment, requiring them to take the oath (or affirmation) of office, which notice may be in the following form. § 12.

SIR :

You are hereby notified, that you were appointed on the _____ day of _____ to the office of _____ and you are required to take the oath, (or affirmation of office) for the said office according to law.

(Signed) A. B.

To C. D.

Dated, &c.

Township Clerk.

Oath of Office.

The township clerk is authorised to administer the oath of office as follows. § 13.

You A. B. do solemnly swear (or affirm, as the case may be) that you will faithfully and dilligently perform the duties of the office of ——— for this present year, according to law, and the best of your abilities. So help you God.

Overseers of highways to take the following oath a copy of which shall be given to them by the township clerk. § 14.

You, A. B. do promise and swear, (or affirm, as the case may be) that you will faithfully, dilligently and impartially perform the duty of overseer of highways, and that you will require each and every person under your charge, (not having compounded for his statute labour) faithfully and dilligently to perform the same according to law, either in person, or by an able bodied substitute, and will report every defaulter to the commissioners, and perform all other matters and things pertaining to your office, as the law directs. So help you God.

The township clerk shall record all the oaths, and report to the commissioners at each and every meeting of the board, all defaulters in taking such oaths. § 15.

Township Clerk's Fee.

The township clerk entitled to 5s. a day from the treasurer of the district, for every day that he may be necessarily employed in the duties of his office, which, with fees allowed by this act, the treasurer is required to pay on demand, upon affidavit being made by such township clerk before any justice of the peace, that such demand is just and true. § 16. Township clerk authorised to administer any oath or affirmation, anthorised or required to be taken by this act § 17.

Assessor's duty.

The assessor shall demand and receive from every rateable inhabitant in the township a list of all the rateable personal property in his, her or their possession ~~in the province~~, and all the lands, tenements, ~~or other real estate~~ in his, her or their possession within the township, specifying the number of the lot or lots, the number of the concession or concessions in which the same is or are situated, or otherwise particularly describing the same, and also the number of acres cultivated or uncultivated in each lot or parcel of land ; which list shall be taken between the first Monday in February and the court of general quarter sessions of the district, which shall be holden next after the first day of March in every year, and shall make a return within the time aforesaid, duly attested under oath (or affirmation) before the clerk of the peace for the district, or township clerk, of all the rateable inhabitants, with a true list of all their rateable property, specifying the particulars above mentioned, and shall in like manner insert his own rateable property therein, at the foot of which, he shall subscribe his name, and shall deliver such return to the clerk of the peace, to be laid before the quarter sessions, and shall within the time aforesaid, put up a correct copy thereof for public inspection at the place where the last township meeting was held, and the assessor shall report to the commissioners the names of all such persons as he conceives have given in false lists, or refused or neglected to give any list, in order that such offenders may be dealt with according to law, at least fourteen days before returning his roll to the clerk of the peace. § 18.

Census.

The assessor is also required to demand and receive from every inhabitant householder or head of a family in his township, a true and correct list of the number of persons composing such family, male and female, and their respective ages: also all deaf and dumb and insane persons, including all person employed by or resident with such householder or head of a family, which list shall or may be given in the following form :

Names of Heads of Families.	Number in each Family.				Deaf & Dumb.	Insane.
	Males.		Females.			
	Under 16.	Over 16.	Under 16.	Over 16.		

And if such householder or head of a family shall refuse or neglect to give a true and correct list to the assessor, he shall be liable to the same penalty as persons refusing or neglecting to give in a true list of their rateable property, and to be recovered in the same way. § 19:

Every assessor shall subscribe such list, and shall transmit the same to the clerk of the peace before the said sittings of the quarter sessions, verified upon oath or affirmation, before the township clerk or clerk of the peace to be a true list. § 20.

The clerk of the peace shall make out a general return of the population of his district, from the assessor's returns for the year, and transmit the same to the lieutenant governor, on or before the 1st of July in every year, and if such return shall not be complete, he shall send in a return of such townships as may deficient as soon as practicable after he shall be enabled to do so by the assessor's returns. § 21.

Assessor's Fees.

The assessors shall be entitled to demand from the treasurers of the district the following fees, *per cent.*, viz:

	£	s	d
If the assessment of the rate of one penny in the pound does not amount to £50, he shall receive,	7	0	0
If above £50 and under £100.....	6	10	0
If above 100 and under 150.....	6	0	0
If above 150 and under 200.....	5	5	0
If above 200 and under 250.....	4	15	0

If above 250 and under 300.....	£ 4	5	0
If above 300 and under 350.....	4	0	0
If above 350.....	3	10	0

Collector's Duty.

It shall be the duty of the collector, after having received a certified copy from the clerk of the peace of the assessment roll for the township for the previous year, which shall be sufficient authority for collecting the same from time to time, to demand and receive from the inhabitants, all such rates and assessments as may be due and payable on such assessment list, and shall pay the same over to the district treasurer on or before the sittings of the quarter sessions, reserving the following fees per cent. § 23.

	£	s	d
If the assessment does not amount to £50, then upon the sum collected.....	8	0	0
If above £50 and under £100.....	7	10	0
If above 100 and under 150.....	7	5	0
If above 150 and under 200.....	7	0	0
If above 200 and under 250.....	6	10	0
All sums over 250.....	5	0	0

Collecting Rates.

If any person named on the assessment roll shall neglect or refuse to pay the rate for the space of fourteen days after demand by the collector or his agent duly appointed, the said collector upon oath before one of the commissioners, of such demand and refusal, shall be entitled to demand an execution for the amount, which execution such commissioner is authorised to grant, and upon receipt thereof, the collector shall levy the same by distress and sale of the goods and chattels of the defaulter, giving eight days previous notice of such sale in three public places in the township, and render the overplus to the owner, after deducting the rates assessed and legal charges of distress and sale. § 24.

Fee to such collectors for every distress, advertising and sale, 8s 9d. § 25.

Collector's Bond.

Every collector shall, within eight days after his appointment, and before he shall collect any money, enter into a bond, jointly and severally with two sufficient freeholders, to be approved of by the township clerk, to the treasurer of the district to the full amount of double the assessment of the township for the preceding year, which bond may be in the following form. § 26.

Know all men by these presents, that we, A. B. collector of the rates for the township (or townships) of — in the district of — and C. D. of — and E. F. of — are held and firmly bound to J. O. treasurer of the district of — in the sum of — currency, to be well and truly paid to the said J. O. treasurer as aforesaid, or his successors in office, for which payment well and truly to be made to the said J. O. we bind ourselves jointly and severally, our heirs, executors and administrators firmly by these presents. Sealed with our seals.

The condition of the above bond is such, that if the above bounden A. B. shall collect all the rates and assessments of the township (or townships) of — for the preceding year, ending the first Monday in January in this present year, so far as the law may enable him to do, and shall pay all the monies which he may so collect (except his own per centage) to the treasurer of the district, on or before the next ensuing sittings of the court of quarter sessions, which may be next after the first day of March, then this obligation to be void, or otherwise to remain in full force and virtue. If from want of assets or absence of the party from the township, the collector shall not be able to collect the rate, the same may be collected by the collector in any subsequent year as if the rate was due for the year for which he shall be appointed. § 27.

Township Clerk's Bond.

Every township clerk shall, on or before the first meeting of the commissioners, after his appointment, enter in-

to a bond jointly and severally with two sufficient freeholders, such freeholders and the amount of the bond, to be approved by the commissioners, which bond shall be in the form prescribed for collectors, except the condition, which shall be as follows. § 28.

The condition of the above bond is such, that if the above bounden A. B. shall well and truly pay over all monies coming into his hands by virtue of his office, and applicable to the general uses of the township, and deliver the remainder (if any there be,) together with all books, records and papers belonging to the township, into the hands of his successors in office as the law directs, then this obligation to be void, or otherwise to remain in full force and virtue.

Overseer's duties.

It shall be the duties of the overseer of the highways of any township to superintend, make and keep in repair, the highways, road, streets and bridges, that may be allotted to them severally from time to time, and ordered by the board of commissioners ; and every such overseer after having received such order by giving at least three days notice of the day, hour and place, summon such persons within his division as are liable to perform statute labour that may be due, and order them to work within the time stated in such order, on such parts of the roads, bridges or highways as they are directed to make, amend or repair, and shall or may direct all persons performing such labour, to destroy as much as may be in their power, such weeds as are in his opinion hurtful to good husbandry, and shall give to every person who may have done his statute labour for the year, requiring the same, a certificate under his hand of the performance of such statute labour, to protect such person from being called out again in any other township. § 29.

Composition of Statute Labour.

Any person liable to statute labour according to law may compound on or before the first of May, by paying to the overseer of the division 5s. for a team and driver

for every day he may be required to work, and 2s 6d. every day without such team, which sums shall be expended in such manner as the overseer shall think best for the improvement of the roads in his division. § 31.

Materials.

In order to provide materials for making and erecting bridges or causeways, or repairing any road, any overseer in the actual discharge of his duty, may direct the persons performing statute labour to cut down or make use of any tree or underwood, standing upon any unenclosed and unimproved and uncultivated land, and wilfully doing no unnecessary injury to the premises. § 32.

Statute Labour.

The roads and highways through every township, as also a just share of any road required and necessarily running between the same and any other township, shall be cleared, repaired and maintained by the inhabitants thereof, and every person liable to statute labour, if not compounded for, shall either in person or by a sufficient and able bodied man in his or her stead, be obliged, under the direction of the overseer for the division, to work faithfully and diligently on the said road, and shall bring with him one spade, axe, pickaxe, bar, or such other implement or instrument useful for the purpose aforesaid, as he may be owner of, and be directed by the overseer to bring for the time he may be liable to work, allowing eight hours to each day's work, exclusive of the time of going to and from the place of work: and every person keeping a cart, wagon or team of one or more horses, oxen or beasts of burthen, shall send on every day to be appointed by the overseer, a cart or wagon and team, and one able bodied man to drive the same, for such time as he shall be liable to work on said roads according to law, allowing eight hours for each day's work, which said day's work shall be held equivalent to two day's personal labour; and if any labourer or driver shall refuse or neglect to work faithfully, or to carry good sufficient loads during the time above

mentioned, it shall and may be lawful for the said overseer to discharge such labourer, and the person furnishing the team, shall be liable to the forfeiture which every such person would have incurred by virtue of this act in case such labourer had not attended, or such team and driver had not been sent, and shall not be allowed for the part or portion of the day which he may have laboured. § 33.

The overseer shall cause all statute labour and monies in lieu thereof, to be expended between the 1st of May and the 15th of July in each year, except otherwise directed by the township commissioners for the said township. § 34.

Penalty upon Defaulters.

Every person liable to statute labour, not having compounded, having been duly notified, and neglecting to attend, or send a sufficient deputy with such carriage, team, implement or instrument as may be by this act required and directed by the overseer at the time and place appointed, shall forfeit 5s., for each day : and every person after notice to view fences and appraise and deliver his determination within the time specified by this act, shall forfeit not less than 5s., nor more than 20s., to be recovered by the board of commissioners, by confession or upon the oath of one credible witness, and to be levied by warrant, under the hand and seal of the commissioners, by distress and sale of the goods and chattels of the person so offending, rendering the overplus to the party after deducting the penalty and legal charges attending such distress and sale ; and the imposing of any such fine or penalty by the commissioners, shall not release the party from his liability, but he shall be subject to perform statute duty at any time within the current year when called upon. § 35.

Obstructions

And if any person shall wilfully stop up any road or roads in any township, or shall pull down or destroy any fences, railing or guard, that shall have been erected along any water, bridge or precipice, for the safety of travellers, or any guide or finger-post, such

offender shall forfeit for every offence, a sum not less than 5s. nor more than £5, to be recovered as in the preceding clause ; or in case any tree or trees shall be cut down in, or fall out of any enclosed land, in such a way as to obstruct any public road or highway, the owner or occupier of such enclosure, shall remove the same within twenty-four hours after notice received of such obstruction, under the penalty of 10s. for every day the obstruction continues, to be recovered in like manner. § 36.

Overseer's List.

The overseers shall make out a true list or account of all persons within their divisions, and also of all who own either a sleigh, cart or wagon, and team, and who are liable to work on the highways ; and of the labour done or unperformed by any person liable to perform or compound ; and of all monies that have come into their hands by virtue of their office ; and of the expenditure of the same ; which list or account shall be subscribed by such overseer, and delivered upon oath (if required) to the board of commissioners, at their meeting on the 2nd Saturday in November. § 37.

Pound-keepers duty.

It shall be the duty of the pound-keeper to provide himself with sufficient yards or enclosures for the safe keeping of all such animals as it may be his duty to impound, and to impound all animals unlawfully running at large, trespassing and doing damage, that may be delivered to him by any person resident within his division taking up the same, and to furnish the same with necessary food and drink ; and if after the space of 48 hours such animals shall not be claimed and redeemed by the owner, or some one in his behalf, paying the pound-keeper his lawful demand and charges, and damages awarded in the manner hereinafter mentioned to have been done by such animals to the person taking up the same, he shall cause a notice in writing to be affixed in three public places in the Township,

for at least fifteen days; which notice shall give a description of such animals; and also state the time and place at which he intends to expose the same to sale; and if the owner does not, within the time, redeem the same, by paying to the pound-keeper his legal charges, and the damages awarded, he shall proceed to sell the same to the highest bidder, at the time and place mentioned in the notice, and after deducting his own legal charges and the damages awarded, return the overplus to the owner; and and if none shall appear to make the claim within three months after notice and sale as aforesaid, the pound-keeper shall pay such overplus into the hands of the township clerk, for the improvement of the roads and bridges. § 38.

Oxen and Horses.

If any ox or oxen, horse or horses, shall be impounded, and not claimed before the expiration of fifteen days as aforesaid, and the owner shall not be known by the pound-keeper, in that case he shall not proceed to sale, but postpone the same for three months, at the expiration of which time he shall sell the same, and dispose of the proceeds as in the last clause, the owner being at liberty at any time before such sale to redeem such animals, on paying demands as aforesaid. § 39.

Notice.

The person impounding any animal, shall, within twenty-four hours, state in writing to the pound-keeper, all demands against the owner for damages, and if the owner shall tender the full sum awarded as damages, with costs then incurred, such owner shall not be liable to subsequent costs, which shall be borne by the party claiming extravagant damages. § 40.

Damages.

The pound-keeper shall, within twenty-four hours after having impounded any animal, notify three disinterested freeholders to appraise the damages done, and to judge of the sufficiency of the fence enclosing the ground wherein

such animals were found doing damage, and such freeholders, or any two of them, shall within twenty-four hours after such notice view such fence, and determine whether the same is a lawful fence according to the resolutions of the township meeting, and if so, appraise the damage done, and shall deliver their award in writing to the pound-keeper, within twenty-four hours after having been so notified; and if no damages shall be awarded, the pound-keeper shall, on demand, deliver the same to the owner, who shall be entitled to recover his costs and charges from the impounder. § 41.

Rams, &c.

It shall not be necessary for the pound-keeper to cause fences to be viewed and damages appraised in cases where animals are impounded by him that may be lawfully impounded without being found doing damage, such as rams and other animals not free commoners, but shall otherwise proceed as the law directs. § 42. It shall be lawful for any person to take up any ram, bull, or boar, running at large, contrary to the regulations, and deliver the same to the pound-keeper, to be dealt with according to law. § 43. It shall be the duty of the pound-keeper to impound any ram, bull, or boar, as aforesaid, that may be delivered to him, and advertise the same at three public places in the township for the space of eight days, or such further time as shall be lawfully prescribed by any regulation at the township meeting, and at the expiration of said term publicly to sell the same to the highest bidder, at the time and place stated in such advertisement, unless such animals shall be previously claimed and redeemed by the owner, by his paying to such pound-keeper his fees and the fine imposed at any township meeting, and the pound-keeper shall pay over the same (except his fees) to the township clerk. § 44.

Fees.

The pound-keeper's fees shall be regulated by the board of commissioners, and he shall pay over without delay, to

the person entitled, such sums awarded as damages, that may come into his hands by virtue of his office. § 45.

Commissioners.

The commissioners to be appointed under this act, shall be known by the name of "the board of commissioners for the township of —" and as such shall be capable of performing, ordering and doing all such matters and things as shall be authorised by this act, and the majority shall be competent to transact any lawful business.

Clerk to Commissioners.

The township clerks shall also be clerks to the board of commissioners, and shall attend all their meetings, and record in a book, all judgments, decisions, or orders made by such board, and all other matters which it may be necessary to record; which records shall be part of the records of the township, and shall be delivered to their successors in office. § 47.

Meeting of the Board.

It shall be the duty of the board to meet at the same place at which the township meeting was last before holden at the hour of ten in the forenoon, on the third Saturday in January, the first Saturday in July, and on the third Saturday in October, and at as many other times and places in the township, as they may deem expedient. § 48.

Their duties.

The board of commissioners are authorised and required to take charge of, allot and order to be made, repaired and kept in repair, in such manner as they may think expedient, all such roads and bridges as shall be required to be kept by the inhabitants by any act or acts of the legislature. § 49.

Division of the Township.

The said board of commissioners, at their meeting on the 3d Saturday in January, or at some adjourned meeting,

before the 3d Saturday in April shall divide the township into divisions, and allot to the overseers their several divisions, and order statute labour to be expended on the roads in any particular part of such township, or any adjacent township, as to them shall seem expedient: and also to hear and determine upon all such matters as may come before them, by virtue of this act. § 50.

Pound Fees.

The board shall also resolve what fees or compensation for poundage, or feeding animals, may be taken by the pound-keepers, and the quantity of provender to be daily allowed to the animals; and allot to the pound-keepers their several precincts or divisions, a statement of which shall be transmitted to the several pound-keepers, and a true copy posted up in some place in the township, within the respective divisions. § 51.

Vacancies.

It shall be lawful for such board, at any of their meetings as aforesaid, to fill up all vacancies in the township offices, by appointing other officers instead, that may occur from death or removal, or the neglect or refusal of any person to take the oath, or affirmation of office, and the township clerk shall notify and administer an oath, or affirmation of office, to such as may be appointed at meetings of the board, and report delinquents in the same manner as if they had been appointed at the township meeting; and such officers, so appointed by such board, shall have the same power and authorities, and be liable to the same responsibilities and penalties as under an appointment at the township meetings. § 52.

Exemptions.

26

Any person not assessed at more than £25, and by reason of age, sickness, numerous family, or misfortune, in poor and indigent circumstances, may, upon notifying the overseer, and application to the board of commissioners to

be released from statute labour, in the discretion of the board, be exempted from the whole or part of such statute labour. § 53.

Neglecting Oath of Office.

Any person appointed to a township office, neglecting or refusing to take the oath, or affirmation of office, within eight days after due notification, or after such oath or affirmation, neglecting or, refusing to act, or taking any greater fee or allowance than is authorised by this act, or neglecting, or refusing to deliver in a true list of his or her rateable property, real or personal, or wilfully mis-tating such rateable property, shall forfeit and pay, not less than one pound, nor more than five pounds, with costs, for every such neglect, refusal, or violation of the law, to be levied by distress and sale of the offender's goods: eight days' previous notice of such sale being given, and the overplus rendered to the owner. § 54.— Upon complaint of such neglect, or refusal, or violation, before the board of commissioners, or if such neglect or refusal shall come to the knowledge of the said commissioners by returns as aforesaid, the said board shall, after summoning the party or delinquent before them, (which summons, any member of the board may issue) hear and determine the same, upon sufficient proof, by confession, or oath of one witness, and issue such warrant of distress and sale as aforesaid, to some constable of the township who is authorised to execute the same, unless the penalty be immediately paid, and the same, when collected, shall be paid to the township clerk. § 55.

Commissioner's Fees.

The several commissioners for the respective townships, shall be entitled to demand and receive from the treasurer of the district, the sum of 5s. per day, for every day they are necessarily engaged in the said duties and services, the said days to be certified by the township clerk; which sum the treasurer is authorised and required to pay, on demand and production of such certificate, and the commissioners shall render an account to the township

clerks, of the monies so received by them; which account, together with all monies received by the said clerk for his services, shall be laid before the next township meeting for inspection. § 56.

Constable's Fees.

The constable, executing any warrant, execution, or summons under this act, shall be entitled to the following fees, and no more, for executing the same, viz: 4d. per mile for every mile he may have to travel to execute the same, to be verified upon oath, if required; and for levying, advertising, selling and making returns, 2s 6d.; for every summons served, 8d. § 57.

Overseer's Returns.

It shall be the duty of the board carefully to examine the returns of the several overseers, and of the township clerk, and also the books, accounts, and papers of such clerk; and upon the appearance of any neglect or default, the board shall summon such person to answer for such offence, and proceed against him, as if complaint had been duly made. § 58.

Summons.

It shall and may be lawful for the board, or any one of them to issue a summons to any person in the township, that may be required by any party, or if such board shall think it necessary to require the attendance of any witness to appear before the board at any of their meetings, to give evidence, or answer to a complaint, as the case may be, which summons may be in the following form. § 59.

To A. B.

You are hereby required to be and appear before the board of commissioners for the township of — on the — day of — at — in the said township, to give evidence respecting a complaint against C. D. and for (describing the complaint) or to answer to a complaint

against you, (describing the complaint) as the case may be. Dated, this — day of — 188—.

E. F.

Commissioner.

Monies

Justices of the peace are authorised to pay into the hands of the township clerk, all monies arising from fines, &c. under the summary punishment act (4 W. 4. c. 4.) also the commutation in lieu of militia service, under the 4 W. 4. c. —. § 60.

Annual Account.

The township clerk shall make out a full and detailed account of all monies received and expended by virtue of this act, during the current year, certified and signed by him, and a copy thereof shall be put up for public inspection, at three of the most public places within the township, one of which shall be the place at which the ensuing township meeting shall be ordered to be held, on or before the third Monday in December, and the said clerk shall be allowed 10s. for each copy. § 61.

Expenditure of Monies.

All monies that shall come into the hands of the township clerk by virtue of his office, shall be expended by the board of commissioners in making or improving the public highways, roads and bridges of such township, and shall be paid by such township clerk to the order of such board, and the monies remaining unexpended in his hands, shall be handed over to his successor, within four days after the termination of his office. § 62.

Wild Lands.

The township clerk is authorised to demand and receive from the district treasurer, at any time after the quarter sessions, next after the first of March, all monies paid into the treasury for his township, under the wild lands assessment act, for the improvement of roads and bridges,

and that have not been expended, and the respective township clerks first appointed under this act, are authorised to demand and receive from the treasurer, all such money as aforesaid, as may be remaining in the treasury unappropriated, any law, &c. to the contrary notwithstanding. § 63. The wild land assessment monies shall be laid out by the commissioners in making or improving roads and bridges in the township in which the lands are situated for which such taxes are paid, and the said commissioners shall make out a return of the amount so received, and the manner and place where the same has been expended, to be handed to the clerk, and laid before the next township meeting. § 64.

Contracts.

Commissioners may contract with any person or persons resident in the township, for making, in a permanent and substantial manner, any part of any public road within their township, in lieu of his or their statute labour, for any number of years, not exceeding five; which agreement shall be in writing, and signed by the parties, and shall be binding on the commissioners and their successors, and the other parties to the contract.—§ 65. In case of any breach of said contract, the parties shall be liable to the same penalty that persons are by this act liable to, for refusing or neglecting to perform statute labour. § 66.

Arbitration by Ballot.

In case of any dispute as to the fulfilment of the contract, the same shall be submitted to three overseers of highways of the township for the year, to be drawn by public ballot, from the whole list of overseers, by the township clerk, who shall give the contending parties notice of the time and place of such ballot, and the township clerk shall appoint the time and place for the meeting, and shall give the overseers and the parties to such dispute, at least, eight days notice, and thereupon it shall be the duty of such overseers to meet, and after having the said agreement submitted to them, and examining the premises, to make such award as to them shall appear just, which shall

be final. § 67. False swearing, or affirming, under this act, to be liable to prosecution for perjury. § 68. The township clerk shall require the bond from the collector, and if not given, it shall be reported to the board of commissioners, who may appoint another, or impose a penalty as for neglect of duty. § 69.

Town Wardens.

Commissioners, under this act to be town wardens. § 70.

Township Records.

Records of the townships may be examined, on payment of 1s. § 71. in case of the inadvertent omission of any name in the assessment roll, such person shall, notwithstanding, be liable to work on the highways. § 72.

Commencement of Act.

This act to take effect on the first of December next, and no sooner. § 73. And be in force two years. § 74.

Immediate Repairs.

In case it shall be necessary to repair any sudden breach in the public highway by reason of any bridge, or causeway giving way, or from any other casualty, or to remove any obstruction on account of snow, or to fix, or set up beacons, or stakes, as a guide for travellers, the overseers of the division may do so out of the monies in their hands applicable to the roads, or direct statute labour for that purpose; and in case the overseer shall not have in his hands at the time, any such monies, or statute labour at his command, he may direct any person in his division liable to statute labour, to repair such breach, &c. and such overseer shall keep an account of the time, which he shall transmit to the clerk, to be laid before the commissioners, who may exempt such persons from performing any part of his statute labour the next year, and give a certificate to that effect, which shall be taken and credited by the overseer; and any person neglecting or refusing to work as aforesaid, shall be liable to the same penalties as

under this
68. The
collector,
rd of com-
e a penal-

before prescribed for neglecting, or refusing to work, un-
less reasonable excuse can be shown. Such labour to be
equally proportioned in the division. § 75.

Commissioners Incorporated.

ens. § 70.

The commissioners under this act shall be as a corporation,
to represent the whole inhabitants, and may sue, prose-
cute or defend. § 76.

Board of Commissioners.

, on pay-
mission of
shall, not-
ys. § 72.

By the 46 clause of the preceding act a majority of the
board of commissioners, is declared competent to transact
all lawful business. Two commissioners will therefore
constitute a *quorum*.

aber next,
ars. § 74.

In all matters to be brought before the board for adjudi-
cation, one commissioner, however, is authorised to issue
a summons to the party.

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In their judicial capacity, the board will of course be
subject to the same rules of law, in penal matters, as all
inferior Jurisdictions are liable to: and their proceedings
will be liable to revision by the court of K. B. upon cer-
tiorari. 2 *Haw.* 286.

It will therefore be highly important that the commission-
ers should, in penal matters, proceed with due precaution
and precision, as well in reference to the form, as the mat-
ter of their proceedings.

In the first place, when any party is complained against
for a breach of the provisions of this act, and has incur-
red any prescribed penalty, an information should be laid
before the court, or any one commissioner out of court,
upon which the defendant should be duly summoned to ap-
pear, giving him reasonable time to prepare for his de-
fence. Upon the hearing of the case, if the court shall
pronounce the defendant guilty of the charge laid against
him, the conviction should afterwards be drawn up and
signed by the commissioners present at the conviction.

The conviction, however, need not be drawn up imme-
diately following the judgment of the court: and the penal-
ty may be actually levied before it is so drawn up, see

Paley on convictions, 316. It will be sufficient if drawn up within a reasonable time afterwards. But if it can be conveniently done during the sitting of the board, it would perhaps be best to adopt this course, to prevent the possibility, by any unforeseen accident, of the conviction being afterwards completed.

A variety of forms of information will be found appended to this work, which the author believes will be found applicable and proper in most of, if not nearly all the cases that can be expected to arise under this act, together with a general form of "conviction."

In the preparation of any of these forms, care should be taken not to use abbreviations, or figures; words and figures should be written at full length.

As the act does not give an appeal against the decision of the commissioners, their judgment will be final: It being a rule of law, that unless an appeal be expressly allowed by statute, it cannot be claimed, as of right.

The conviction should not be returned to the sessions, as convictions before justices are directed to be; but should be carefully filed and preserved with the records of the township.

With respect to the rules of evidence and matters of law, generally connected with the jurisdiction and power of this court, as a court instituted and recognised by law, the author respectfully begs leave to refer the reader to his other late work, the "Provincial Justice," from which the commissioners in cases of doubt may probably be able to glean some further useful information.

Form of Notice for convening a Township Meeting.

Township Meeting.

The Inhabitant householders and freeholders of this township are respectfully informed that the annual township meeting for this township, will be held at _____ in the said township, on _____ the _____ day of _____ next, at the hour of ten o'clock in the forenoon, for the purpose of choosing and nominating officers for the year ensuing

and transacting such other business (relative to the affairs of the said township) as may be requisite and necessary and according to law.

Dated at ——— in the township of ——— in the ——— district, the ——— day of ——— 183

A. B. Township Clerk.

Information (upon oath) of the Collector of refusal or neglect to pay Rates. (§ 24.)

Township of ——— } The information and complaint of
in the ——— District. } A. B. of the township of ——— in
the ——— district in the province of Upper Canada, collector of the rates and assessments of the said township, [or of C. D. of &c. the duly authorised agent of A. B. &c.] taken on oath this ——— day of ——— 18—, before the board of commissioners for the said township, (or before me E. F. one of the board of commissioners of the said township), the said informant saith, that A. O. of the said township yeoman, is duly rated in the assessment roll of the said township for the year ——— (a certified copy whereof is now produced,) at the sum of ——— and that he this informant did on the ——— day of ——— last duly demand of the said A. O. the payment of the said rate, but that the said A. O. did not then pay the same nor hath he at any time since paid the said rate or any part thereof to this informant, but that the same remains wholly in arrear and unpaid, and therefore he this informant prayeth a warrant to levy the same pursuant to the statute in such case made and provided.

A. B.

Sworn before me.

Warrant of Distress thereon.

Township of ——— } To wit. To A. B. collector of the
District of ——— } township of ——— in the ——— District.
Whereas complaint in writing hath this day been made and exhibited to the board of commissioners for the said township, by and upon the oath of A. B. collector of the said township, that A. O. of the said township yeoman having been duly rated at the sum of £ ——— in the assessment

roll of the said township for the year, a certified copy whereof hath been exhibited and shewn to me the said commissioner, hath for the space of fourteen days and upwards after demand thereof made by the said collector neglected and refused to pay the said rate and that the same is now wholly in arrear and unpaid. These are therefore to authorise and command you forthwith to make distress of the goods and chattels of the said A. O. and if within the space of eight days the said sum together with the reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods and chattels, so by you distrained, giving due notice of the time and place of such sale, and out of the money arising by such sale that you do retain the sum of — in satisfaction of the said rate, together with the reasonable charges of distress and sale, rendering the overplus on demand unto the said A. O. Given under our hands and seals the — day of — in the year of our Lord 18—.

E. F. (Seal.)
Commissioner.

Overseers Certificate of Statute Labour performed.

I do hereby certify that A. B. now residing in the Township of — in the — district hath duly performed statute labour in the said township for the present year. Witness my hand at the township aforesaid the — day of — 18—

G. H. Overseer.

Information against a defaulter, for not doing Statute Labour. (§ 35.) penalty, 5s.

Township of — }
District of — } to wit: The information and complaint of A. B. of the Township of — in the district of — in the province of Upper Canada, one of the overseers of the highways in the said township, taken on oath this — day of — before the board of commissioners of the said township, (or before C. D. one of the board of commissioners of the

said township), the said informant saith that G. R. of the township aforesaid, yeoman, being a person liable to perform certain duty and labour upon the public highways in the said township, pursuant to the statute in such case made and provided; and having been duly notified and summoned to attend and perform such his duty and labour aforesaid, upon the highways within the division allotted to this informant, in the said township, to wit, (*here describe the particular part of the road*) in the township and division aforesaid, on Tuesday the ——— day of ——— last he the said G. R. did not either by himself personally or by any other person in his stead, attend and perform such his duty and labour at the time and place aforesaid, nor hath he the said G. R. paid to this informant any sum of money whatever by way of composition in lieu thereof, but the said G. R. in the premises hath wholly made default contrary to the form of the statute in such case made and provided. Wherefore the said A. B. prayeth that the said G. R. may be convicted in the sum of five shillings, pursuant to the statute in such case made and provided, and that he the said G. R. may be summoned to answer the premises, and make his defence thereto.

Sworn before us.

Information against the owner of a cart, wagon or team, for not performing Statute Labor. § 35. penalty 5s.

Township of ——— } The information and complaint of A.
District of ——— } B. &c. [as before] the said informant
to wit. } saith that K. L. of the township aforesaid, yeoman, being the owner and possessor of a certain cart, [*wagon or team of two horses, or oxen, used to draw the same,*] and liable to send on the day hereinafter mentioned the said cart, [*wagon or team, &c.*] and one able man to drive the same, to work on the highways within the division allotted to this informant in the said township, to wit &c. pursuant to the statute in such case made and provided, and having been duly notified and required did make default by not sending such cart, [*wagon or team &c.*] with an able man to drive the same, to work on the said highways

in the said division, to wit, on Tuesday the — day of — last, he the said K. L. not having paid any composition to this informant for the duty and labour aforesaid, contrary to the statute in such case made and provided; wherefore the said A. B. prayeth, &c. [*as in the preceding information.*]

Information for stopping and incumbering a Public Highway. § 36. (penalty 5s. to 5l.)

Township of — } The information and complaint of A.
District of — } B. &c. (*as before*,) the said informant
to wit. } saith that O. P. of the township of
— in the said district, on the — day of — last, did,
as this informant hath been informed and believes, wilfully
certain public highway, in the said township,
leading from [*here describe the road*] to be stopped up [*or
incumbered*] by lodging and depositing in and upon
the said public highway a quantity of lumber, [*or by
whatever other means the thoroughfare was impeded*,] con-
trary to the statute in such case made and provided, [*add
also, if such be the case, and this informant further saith,
that the obstruction aforesaid still remains*,] wherefore the
said A. B. prayeth, &c. (*as before*.) Sworn before
us, &c.

*Information against a party for destroying road fences
sign posts &c. s. 36. (penalty the same.)*

Township of — } The Information and complaint of A.
District of — } B. &c. (*as before*) the said informant
to wit, } saith that P. Q. of the township of —
in the district of — yeoman, on the — day of
— last did wilfully pull down and destroy [a certain
railing or guard of posts and rails (*as the case may be*) erected
for the safety of travellers along a certain watercourse,
[bridge, or precipice,] situate and being in the township
and district aforesaid,] or a certain guide or finger post,
erected upon or near to a certain highway situate and being
in the said township and district and leading from — to

— contrary to the statute in such case made and provided wherefore the said P. B. prayeth &c. (*as before.*)
Sworn before us &c.

Information against a party for not removing a fallen tree from the road. s. 36. (penalty 10s.)

Township of — } The information and complaint of
District of — } A. B. &c. (*as before*) The said A. B.
to wit. } saith that a certain tree having been
cut down (or fallen) out of certain enclosed land belonging to C. D. of the said township, yeoman, across a certain public road and highway in the said township, near unto and next adjoining the said enclosed land of the said C. D. he, this informant, did, on the — day of — instant, personally notify the same to him the said C. D. and at the same time require him the said C. D. to remove the same; and this informant further saith that the said C. D. hath neglected to remove the said tree out of the said public road and highway, within the space of twenty-four hours after having been notified and required to do so as aforesaid, and that the said tree is still remaining upon and across the said public road and highway, there incumbering the same, contrary to the statute in such case made and provided: Wherefore this informant prayeth &c. (*as before.*)
Sworn, &c.

Oath of the overseer verifying his accounts &c. s. 37.

A. B. of the township of —, in the — district, yeoman, one of the overseers of the said township, maketh oath, and saith that the account now exhibited and hereunto annexed and subscribed by this deponent, contains a just, true, and fair account, so far as this deponent's knowledge doth extend, of all such persons residing within the division of the highways in the said township allotted to this deponent as have been at any time since the appointment of this deponent as such overseer as aforesaid liable to work on the highways in the said township; and also that the said account doth also

contain a just and true statement and account of the labour done or unperformed by all such persons as were during the period aforesaid liable to work on the said highways and also of all monies that have come into this deponent's hands by virtue of his said office, and of the expenditure or payment of the same.

A. B.

Sworn before the board, &c.

Notice by the Pound Keeper to be given within 48 hours after cattle impounded. s. 38.

Take notice that I have this day impounded in the common pound, situate at [one bay horse, &c. *describing also any particular marks he may have*, and one brown and white cow, &c. *describing also the animal, more particularly if need be*,] which were this day found trespassing upon the lands of C. D. in the said township, and unless the owner or owners thereof shall, within fifteen days from the date hereof, redeem the same at the aforesaid pound, by paying the damages sustained and the charges of the pound keeper, I shall proceed to sell the same by public auction, on the day of next, in the market place of the said town of [or wherever else it may be expedient to effect such sale] pursuant to the statute in such case made and provided. Witness my hand at, in the said district, the day of 183 .

A. B. pound keeper.

Notice from the Pound Keeper to three freeholders to assess damages. s. 41.

Mr. A. B. of

You are hereby notified and required by me within twenty-four hours after this notice, to view the fences belonging to the lands of C. D. situate and being lot — in the concession in the township of in the district, to judge of the sufficiency of the same, and appraise the damages (if any) done by certain cattle found trespass-

sing thereon, and now impounded. Dated at in the township and district aforesaid, the — day of 183 .

C. M. pound keeper.

The Award.

We the undersigned freeholders of the township of.... in the district, having been duly notified to view the fences belonging to the lands of C. D. situate and being lot in the concession of the said township, do hereby certify, that we have viewed the same, and have determined the said fences to be good and lawful, and we do hereby award the sum of as and for the damages done by certain cattle found trespassing on the said lands, and now impounded for the same, [or if no damage done then say "and we do award and adjudge that no damage has been done by the said cattle trespassing on the said lands;"] or [if the fences be insufficient, then say, "have determined the said fences not to be good and lawful."] Witness our hands at the township aforesaid, the — day of — 183 .

Notice of Cattle running at large.

Notice is hereby given, that I have this day impounded [a ram, bull, or boar, &c.] running at large, and delivered to me to be impounded, and unless the owner or owners thereof shall within the space of — days from the date of this notice claim the same, and pay the fine and charges, the same will be sold, and the proceeds thereof disposed of according to law. Witness my hand at — in the township of — in the — district, the — day of — 18 .

C. M. pound keeper.

Information against an Inhabitant householder for neglecting to serve, or take the oath of Office within eight days. § 54. penalty 20s. to £5. (It should not be upon Oath.)

Township of — } Be it remembered that on the —
District of — } day of — in the year of our
to wit, N2

Lord ———, at the township of ——— in the said district, A. B. of the said township, constable of the same, personally cometh before the board of commissioners for the said township, and informeth the said board that C. D. of the same township, yeoman, was at a town meeting held at ———, in the said township, on Monday the ——— day of January now last past, (or instant, duly nominated to the Office of ——— of the said township, he the said C. D. then being an inhabitant householder in the said township, and liable to serve the said office; and that the said C. D. afterwards, to wit—within the space of eight days next after such nomination as aforesaid, refused to serve and qualify himself to serve the said office by taking the oath in that behalf, contrary to the form of the statute in such case made and provided, whereby the said C. D. hath forfeited a sum of money not being less than one pound nor more than five pounds for his said offence; wherefore the said A. B. prayeth, that the said C. D. may be convicted of the offence aforesaid, and that he may be summoned to make his defence thereto. Exhibited before the Board.

C. D.

A. B. }
C. D. } Commissioners.

Information against an officer for exacting illegal fees.
§ 55. penalty 20s. to 5l.

Township of ——— } The information and complaint of A.
District of ——— } B. &c. (as before,) the said informant
to wit. } saith that O. P. of the township of
—— in the district of ——— yeoman, and one of the constables of the said township, on the ——— day of ——— in the year of our Lord 18— at the township aforesaid, did demand and take of and from this informant, a greater fee than he was authorised to do by law, to wit, the sum of ——— [for executing a warrant, &c.] contrary to the form of the statute in such case made and provided. Wherefore the said A. B. prayeth, that the said O. P. may be convicted in a sum not less than one pound nor more than five pounds, for his said offence, pursuant to the statute in such case

made and provided, and that he the said O. P. may be summoned to answer the premises, and make his defence thereto.
Sworn, &c.

*Information against an inhabitant for refusing to deliver a list of rateable property. (not upon oath) §55.
penalty 20s. to 5l.*

Township of ——— } Be it remembered that on the ——— day
District of ——— } of ——— in the year of our Lord ———
to wit. } at the township of ——— in the district
of ———, A. B. of the same township, yeoman, and one of
the assessors of the said township personally cometh before
the board of commissioners for the said township, and in-
formeth the said board, that C. D. of the same township,
yeoman, being a person having certain rateable property
in this province, liable to be rated and assessed according
to law, and having being duly required to deliver in a true
list of such his rateable property, wilfully did neglect and
refuse deliver in a true list of such rateable property, within
the time required by law to wit, between the ———
day of ———, and the ——— day of ——— (or wilfully
did deliver in an untrue list of such his rateable property,
by omitting to insert therein, (*here mention the property
omitted*) contrary to the form of the statute in such case
made and provided, whereby the said C. D. hath forfeited
a sum of money, not being less &c. (as before in form No.
———)

A general Form of Conviction.

Township of } Be it remembered that on the
District of } day of in the year of our Lord
To Wit: } at in the district of,
A. B. of in the district aforesaid, labourer, [or as the
case may be] personally came before the board of commis-
sioners for the township of aforesaid, and informed
the said board that E. F. of in the district aforesaid,
yeoman, [or as the case may be] on the day of
in the year of our Lord at in the said district of
. . . . did [here set forth the fact for which the information

is laid]; whereupon the said E. F. after being duly summoned to answer the said charge, appeared before the said board on the day of in the year of our Lord at in the said district of and having heard the charge contained in the said information, declared that he was not guilty of the said offence, [or as the case may be, viz : did not appear before the said board pursuant to the said summons, or did neglect and refuse to make any defence against the said charge] whereupon (or otherwise) the said board did proceed to examine into the truth of the charge contained in the said information, and on the day of aforesaid, at in the district of aforesaid, one credible witness, to wit, A. W. of in the said district, labourer, [or as the case may be] upon his oath deposeth and saith, [if E. F. be present, say, in the presence of the said E. F.] that on the day of in the year of our Lord the said E. F. at in the said district of — [here state the evidence, and nearly as possible in the words used by the witness ; and if more than one witness be examined, state the evidence given by each ; or if the defendant confess, then, instead of stating the evidence, say, “and the said E. F. acknowledged and voluntarily confessed the same to be true”] therefore it manifestly appearing to the said board that he the said E. F. is guilty of the offence charged upon him in the said information, the said board doth hereby convict him of the offence aforesaid, and doth declare and adjudge, that he the said E. F. hath forfeited the sum of — of lawful money of this province, for the offence aforesaid, to be distributed or paid [as the case may be] according to the form of the statute in that case made and provided.

Form of the Contract for making Road. § 66.

Articles of contract made and entered into this day of in the year of our Lord 183 , between the board of commissioners for the township of in the district of of the one part, and C. D. of the same township, yeoman, of the other part ; whereby the said G. H. doth contract with the said board to make in a permanent

and substantial manner, on or before the day of now next ensuing, all that part of [here describe the road] in lieu of his statute labour within the said township, for the term of years now next ensuing ; and the said board doth hereby on their part agree, that upon the due performance and completion of such agreement, he, the said C. D. shall be exempt from all statute labour in the said township for the said term of years, such term to commence and be computed from the day of the date of these presents.

DEBTORS.

By a recent statute 5. W. 4. c. 3. No person shall be arrested, or held to bail, for any debt under £10, by the king's bench or district court, after the 1st June 1835. § 2. No person shall be taken in execution for costs only, nor upon any judgment where the debt shall not amount to £10 or upwards, exclusive of costs. § 3. Any person in execution for debt or damages not exceeding £20 exclusive of costs, and who shall have lain in prison three calendar months, or been upon the gaol limits twelve calendar months, may, upon application to the court in term time, obtain his discharge, his property still remaining liable to the debt. § 4. Any person in execution for any sum exceeding £20, exclusive of costs, and who shall have lain in prison for six calendar months, when the debt shall not exceed £100, or twelve calendar months if exceeding £100, may upon giving thirty days notice, in writing, to the opposite party or his attorney, apply in term time, for his discharge. § 5. The court may examine into the matter, and in its discretion discharge the debtor. § 8. Any person who shall assign, remove, conceal or dispose of any of his property with intent to defraud his creditors, and any person who shall receive such property with such intent, shall upon conviction, be deemed guilty of a misdemeanor, and may

be punished by fine or imprisonment, not exceeding £100 or six months imprisonment. § 9. This act to continue in force for four years.

By the 45 G. 3. c. 7. The court upon the application of any prisoner in execution for debt, making oath that he is not worth £5, shall order the plaintiff to pay such defendant 5s. weekly maintenance, so long as he shall be detained in prison at the suit of such plaintiff, on Monday in each week, in failure of which, the defendant shall be discharged: such payment not to be made if the plaintiff can prove that the defendant has secreted or conveyed away his effects to defraud his creditors.

By the 11 G. 4. c. 3. § 2. No debtor while upon the limits shall be entitled to the above weekly allowance. § 9. An execution may be issued against the goods and chattels of a debtor upon the limits, excepting his household furniture, not exceeding £12 10 0 and tools and implements of trade. And by the 11 G. 4. c. 4. the necessary wearing apparel of any debtor or of his family, and their bed and bedding, shall be exempt from sale.

By the 4 W. 4. c. 3. Any person arrested upon *mesne* process, (that is upon the commencement of any action) and making oath that he is unable to procure bail, and not worth £5, will be entitled to a weekly allowance of 5s. from the plaintiff, upon a judge's order, and in default of payment shall be discharged.

Bail.

By the 4 W. 4. c. 5. The special bail of any defendant may surrender their principal to the *Sheriff of any district*, and upon the production of a copy of the bailpiece, certified by the clerk of the court, the sheriff of any such district shall receive the defendant into his custody, and give a certificate of such surrender to discharge the bail.

FLOUR, &c.

By Statute 41 G. 3. c. 7. it shall be lawful for the lieutenant governor to appoint one or more inspectors, at such places as he shall deem proper, who shall take the following oath ;

‘ I — do sincerely swear, that I will faithfully and impartially, and according to the best of my skill and understanding, execute the office and duty of an inspector or examiner of flour, or pot and pearl ashes (as the case may be) according to the true intent and meaning of an act of this province, entitled, “ an act to authorise the governor, lieutenant governor, or person administering the government, to appoint inspectors of flour, pot and pearl ashes, within this province.” So help me God.’

§ 1. 2. And it shall be lawful for any person having flour, &c. to call upon the inspector to examine the same, who is hereby required to do so, by boring the head of the cask, and piercing through the flour with the usual instrument, and the said inspector shall declare the quality of the same, by marking it as superfine, fine, or middling, and if unsound or soured : and in case of pot and pearl ashes, to unpack the cask and repack the same, and mark the cask as first, second, or third sort, or merely salts, as the case may be. § 3. And for every barrel of flour so examined, the inspector shall have three pence ; and for every cask of pot and pearl ashes, one shilling.

By 60 G. 3. c. 5. every miller shall provide brands or marking irons, for the purpose of branding and marking flour packed in barrels, on which shall be expressed the name of the mill, with the words Upper Canada, the nett weight and tare in figures, and also the words superfine, fine, or fine middlings. § 2. that all wheat flour shall, by such miller, be made merchantable and of due fineness, and shall be honestly and well packed, in good and sufficient casks, made of staves well seasoned, and bound with ten hoops, and the tare marked on the said cask, with the nett flour, each cask to contain 196 lbs. § 3. That on any miller being required to make flour intended to be of the first quality, on each cask shall be branded, superfine ;

second quality, the word *fine*; third quality, the words *fine middlings*; under the penalty of 10s. for every cask. § 4. All flour for sale, packed and branded as aforesaid, shall, at the option of the purchaser, be inspected, and the expense paid equally. § 5. Putting a false or wrong tare on any cask of flour, subject to 10s. penalty. § 6. Counterfeiting brand marks, or putting into an empty branded cask, flour of another quality, subject to a penalty of 20s. for every offence.

§ 7. Inspectors shall weigh any suspected cask of flour, and if not weight, brand on the head the word *light*, and for every cask so branded, the manufacturer shall pay 10s. § 8. Inspector to brand the initials of his name on all casks of flour inspected by him. § 9. And the real quality of the flour, if not before rightly branded. § 10. Inspectors not to deal in flour under penalty of forfeiting their commission. § 11. Fines recoverable with costs before any one justice, who shall summon the offender, and upon his appearance or default, proceed to judgment; one moiety of such fines to the use of the province, and the other to the informer.

JURORS.

By stat. 34 G. 3, c. 1, it is enacted, that the clerk of the peace of each district shall yearly (under the penalty of £5,) make up from the assessor's returns a list of inhabitant householders to be transmitted or delivered to the sheriff; and every person returned in such list shall be qualified to serve on juries; and no sheriff or coroner shall return any other person or any juror whose name shall not appear on such list. § 2. Sheriff's bailiffs shall not summon any person to serve on juries at the sessions or assizes who shall have served within *one year* before, under the penalty of £10. § 3. the sheriff shall keep a register of jurors on trials, and grant certificates of service if required

without fee or reward. § 4. No reward shall be taken for excusing any persons from serving on juries, and no juror shall be summoned whose name is not specified in the sheriff's mandate; and if any sheriff or bailiff transgress herein, he shall be fined in the discretion of the court of assize. § 6. The name of every juror shall be written on distinct pieces of paper or parchment, and shall be delivered to the marshal, and when a cause shall be called on, he shall in court draw out the juror's names, successively, until twelve shall be drawn and allowed, and being sworn, the same shall be the jury to try the cause, and shall be kept apart till they have given their verdict; their names shall be again returned to the glass, to be re-drawn, until all the causes are disposed of.

Any juror not appearing after having been three times called, shall pay a fine not exceeding £3, nor less than 20s. unless reasonable cause be shown. § 8. Persons sixty years of age shall be exempt serving on juries.

By the 2 G. 4, c. 1, § 30. Every common juror shall be allowed 1s. 3d. in every cause in which he shall be sworn, to be paid by the plaintiff or his attorney.

JUSTICES FEES.

By the 4 W. 4. c. 17. the following fees and no more are authorised to be taken by justices of the peace, or by their clerks:

For an information and warrant for apprehension for an assault or other misdemeanor,...	£ 0	3	9
For discharge of the defendant,.....	0	1	3
For information and warrant for surety of the peace,.....	0	3	9
For discharge of the defendant,.....	0	1	3
For every recognizance,.....	0	2	6
For every information, besides that of the complainant,.....	0	1	3
For warrant of commitment,.....	0	2	6

And for costs in cases of conviction under penal statutes, when the fees are not expressly prescribed by any statute.

For information and warrant or summons,...	0	3	9
For every subpoena to a witness,.....	0	0	6
For every conviction under a penal statute,..	0	7	6
For warrant to levy a penalty,.....	0	2	6
For making up every record of conviction, when the same is required to be returned to the sessions or on certiorari,.....	0	10	0
For every certificate of dismissal of any charge under the act providing for the summary punishment of petty trespasses and other offences,.....	0	2	6
And in cases before a single justice, where the penalty is no higher than £5, for the conviction,.....	0	2	6
And for the warrant to levy,.....	0	2	6

LANDS AND TENEMENTS.

By the 43 G. 3, c. 1, entitled, "An act to allow time for the sale of lands and tenements by the sheriff, it is enacted, that goods and chattels, lands and tenements, shall not be included in the same writ of execution, nor shall any such process issue against the lands and tenements until the return of the process against the goods and chattels.

§ 2. And the writ against the lands and tenements shall not be made returnable in less than *twelve months* from the *teste* (that is the date,) thereof; nor shall the sheriff expose the same to sale within less than twelve months from the day on which the writ shall have been delivered to him.

Title by Possession.

By the 4 W. 4, c. 1. § 16, it is enacted, that after the 1st of July 1834, no person shall recover any land or rent but within twenty years next after the time at which the

right accrued, except in case of wild lands, when the time shall begin to run from the time that the lands were actually in possession or cultivated, unless proof can be given that the party claiming had full knowledge of the other party being in possession.

In case of infancy, or any other disability, a further period of ten years shall be allowed after the removal of such disability. § 23. But in no case shall land be recovered after 40 years.

MILL DAMS.

By the 9 G. 4, c. 4. Every owner or occupier of any mill dam, legally erected, or where lumber is usually brought down the stream on which such mill-dam is erected, or where salmon or pickerel abound therein, in this province, who shall neglect to construct and erect a good and sufficient apron to his or their dam, as hereinafter set forth, shall, for such offence, yearly, and every year, forfeit and pay £25. ; one moiety of which shall go to the king, for the use of the province, and the other to the party who shall sue in any court of record.

§ 2. Every such apron shall be erected and constructed in the following manner, viz : such apron shall not be less than 18 feet wide, by an inclined plane of 24 feet 8 inches, to a perpendicular of 6 feet, and so in proportion to the height, where the width of the stream will admit, and where such stream or dam is less than 15 feet wide, the whole dam shall be aproned in like manner, with the same inclined plane.

MILLERS.

By 32 G. 3, c. 7. No miller shall demand, take or receive, more than a twelfth share or part for grinding and bolting of grain, under the penalty of £10. Quebec currency ; one moiety to the king, and the other to the person that shall sue for the same in any court of record. § 3. No miller shall be answerable for the loss of any bag of

grain or flour, unless the initials of the christian and surname of the owner be marked thereon, and such mark of distinction previously communicated and made known to the said owner or occupier, or his servant attending the mill. See also, title "Flour," p. 145.

TRAVELLERS.

By 52 G. 3, c. 4, entitled "An act to prevent damage to travellers on the highways in this province," it is enacted, that it shall be the duty of every person travelling the highways with sleds or other carriages, when they meet each other, for each person to turn out to the right hand with their sleds or other carriages, and give one equal half of the road, highway or beaten track, for the more easy passing each other without doing damage to either party's team, sled, or carriage. § 2. Any person refusing shall forfeit and pay 10s. with reasonable costs, to be recovered before one justice, on confession or oath of one witness, to be levied by distress and sale, and in default commitment to the common gaol for any time not exceeding three days, unless such fine and costs be paid. § 3. Every person travelling with sleighs on the road, highway, or beaten track, shall have two or more bells fixed to the harness, under the penalty of 10s. to be recovered as aforesaid. § 5. Complaints to be made within 10 days. § 6. Act to be in force for four years.

By the 56 G. 3, c. 11, § 3. One moiety of all fines under the above act shall be paid to the informer, and the other moiety to the receiver general, for the use of the province. These acts were made permanent by the 59 G. 3, c. 17.

WEIGHTS & MEASURES.

By the 4 G. 4, c. 17, Inspectors are to be appointed in each township to examine and stamp weights and measures, and all storekeepers, shop-keepers, millers, distillers, butchers, bakers, hucksters, and other trading persons, using unstamped weights and measures, are liable to a penalty of £2. for every offence.

By the 5 W. 4, c. 7, the following are made standard

weights, which in all cases shall be equal to the Winchester bushel.

Wheat,	sixty pounds.
Indian corn,	fifty-six pounds.
Rye,	fifty-six pounds.
Peas,	sixty pounds.
Barley,	forty-eight pounds.
Oats,	thirty-four pounds.
Beans,	fifty pounds.
Timothy and clover seeds,	sixty pounds.

And all contracts for sale shall be understood accordingly, unless otherwise expressed.

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1. The first group of variables includes the demographic characteristics of the respondents, such as age, gender, and education level. These variables are used to control for potential confounding factors that may influence the dependent variable.

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